

IQTIṢĀDUNĀ

our economics



IQTISĀDUNĀ OUR ECONOMICS

DISCOVERY ATTEMPT ON
ECONOMIC DOCTRINE IN
ISLAM

Muḥammad Bāqir aṣ-Ṣadr

Volume Two — Part Two

WOFIS

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***In the Name of Allāh,
The All-compassionate, The All-merciful***

*Praise belongs to Allāh, the Lord of all being;
the All-compassionate, the All-merciful;
the Master of the Day of Judgement;
Thee only we serve, and to Thee alone we pray
for succour;
Guide us in the straight path;
the path of those whom Thou hast blessed,
not of those against whom Thou art wrathful,
nor of those who are astray.*

* * * * *

*O' Allāh! send your blessings to the head of
your messengers and the last of
your prophets,
Muḥammad and his pure and cleansed progeny.
Also send your blessings to all your
prophets and envoys.*

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ
أَلْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ الرَّحْمَنِ الرَّحِيمِ
مَالِكِ يَوْمِ الدِّينِ إِيَّاكَ نَعْبُدُ وَإِيَّاكَ نَسْتَعِينُ
أَهْدِنَا الصِّرَاطَ الْمُسْتَقِيمَ صِرَاطَ الَّذِينَ
أَنْعَمْتَ عَلَيْهِمْ غَيْرِ الْمَغْضُوبِ عَلَيْهِمْ
وَلَا الضَّالِّينَ

اللَّهُمَّ صَلِّ عَلَى
سَيِّدِ رُسُلِكَ وَخَاتَمِ أَنْبِيَائِكَ
مُحَمَّدٍ وَآلِهِ الطَّيِّبِينَ الطَّاهِرِينَ
وَصَلِّ عَلَى جَمِيعِ الْأَنْبِيَاءِ وَالْمُرْسَلِينَ

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TRANSLITERATION

ARABIC LETTERS

Symbol	Transliteration	Symbol	Transliteration
ك	'	ك	k
ل	b	ل	l
ت	t	م	m
ث	th	ن	n
ج	j	ه	h
ح	ḥ	و	w
خ	kh	ي	y
د	d	ة	ah, at
ذ	dh		(construct state)
ر	r	ال	article al- and 'l
ز	z		(even before the antepalatals)
س	s		
ش	sh		<u>Long Vowels</u>
ص	ṣ	آ	ā
ض	ḍ	و	ū
ط	ṭ	ي	ī
ظ	ẓ		
‘ or ʿ			<u>Short Vowels</u>
gh		ا	a
f		و	u
q		ي	i

تصدير

١- العلامة الكبير الحجة ، والفقيه المجدد ، والمفكر الاسلامي العبقري السيد محمد باقر الصدر (١٣٥٣/ ١٩٣٥ - ١٤٠٠ / ١٩٨٠) تغمده الله برحمته ، بآثاره التي خلفها للمسلمين عامتهم ومفكريهم ، وبحياته الحافلة بجهوده وجهاده التي قصرتها الأيدي الأنيمية - بكل أسف - لأشهر وأعرف ، وأوسع جانبا ، وأعمق دراسة ، من أن نؤرخه في كلمة قصيرة مقتضبة نقدم بها الترجمة الانجليزية لأثره الشهير (اقتصادنا) .

٢- سبق وأن عرفنا قراءنا الكرام بأهم آثار السيد الصدر في فاتحة الترجمة الانجليزية لكتاب (المرسل . الرسول . الرسالة) واليوم اذ ننشر - بعون الله وتسديده - الترجمة الانجليزية (لاقتصادنا) نجد أنفسنا مضطرين الى أن نلفت انتباه قرائنا الكرام الى ما جاء في مقدمة (اقتصادنا) نفسه ، حيث عرض السيد الصدر في نهايتها نقاطا ستأري من الضروري أن نلاحظ ، وأن نلحظ بعناية تامة .

ولا نريد على ما قاله المؤلف نفسه رضي الله عنه ، شيئا سوى أن هذه النقاط الست التي وضعها المؤلف أمام عينه حينما ألف الكتاب والتي أكد على قرائه أن يضعوها أمام أعينهم حينما يقرأون الكتاب ويدرسون بحوثه كانت نفس هذه النقاط

ماثلة أمام أعيننا حينما أقدمنا على نشر الترجمة الانجليزية للكتاب، ونؤكد على الاهتمام والعناية بها بمثل ما أكد به المؤلف، رحمه الله.

٣- انّ الترجمة الانجليزية لكتاب (اقتصادنا) قامت بها مؤسسة (پير محمد- ابراهيم) الباكستانية، باقتراح منّا.. وبعد أن تمت الترجمة أحالتها الينا، ولم يكن عندنا، بادئ الأمر من بواعث الثقة والاطمئنان الى صحة الترجمة وسلامة النّقل ما يدعونا الى أن نسارع الى نشرها، فبقيت نسخة الترجمة عندنا الى أن عثرنا على من عهدنا اليه مراجعتها وتلافي ما يراه من نقص فيها، وبعد ذلك عثرنا على نقائص، ولم يكن ذلك عن طريق المراجعة المستوعبة، وكان من حسن الحظّ أن وجدنا من يفقه اللّغتين العربيّة والانجليزية، وله اختصاص بالدراسات الاقتصادية فقرأ الترجمة الانجليزية وقارنها بالنّص العربيّ، وتلافي ما أمكنه تلافيه من نقائص وأخطاء كلّ ذلك حسب اجتهاده ورأيه.

وهنا وجدنا أنفسنا قد وصلنا إلى مرحلة كانت نهاية الشوط لما نملكه من امكانيات وما نقدر عليه من جهد وسعى، وبذلك يصحّ منا أن نسعى، بعون الله، إلى نشر الترجمة ولا يصحّ أن يوصف عملنا بأنّه مجازفة كان التّربّث خيرا منه. ومع كلّ هذا فإنّا نفتتح صدورنا لأيّ نقد وملاحظة يردنا، ونرحّب بأيّ اقتراح يعود الى تحسين عملنا، ونأمل أن نتلافى ما نجده من نواقص وأخطاء فيما نستقبله، بتوفيق الله سبحانه.

٤- ونحن -ولله الحمد- إذ ننشر اليوم آخر اجزاء الترجمة الانجليزية للكتاب لنرجو الله سبحانه أن يجعل في الترجمة الانجليزية لهذا الكتاب كل خير وبركة، وأن يعم به النّفع، كما صنع بأصله العربيّ وأن يجعل عملنا خالصا لوجهه الكريم، انه نعم المولى ونعم النصير.

المؤسسة العالمية للخدمات الاسلاميّة ١٤٠٤/١٢/١٨

(لجنة التّأليف والترجمة والنّشر) ١٩٨٤/٩/١٤

طهران — ايران

PUBLISHER'S FOREWORD

1. The great Islamic scholar, regenerating jurist and thinker of genius, al-‘Allāmah as-Sayyid Muḥammad Bāqir aṣ-Ṣadr (1353/ 1935 – 1400/1980) may Allāh encompass him with His Mercy, because of the works which he bequeathed to the Muslims, both the ordinary and the educated among them, and because of his life, which was filled with effort and striving, and which was cut short at the hands of criminals, he is too famous and well-known for us to give his biography in this brief preface which we are giving to the English translation of his celebrated book, *Iqtiṣādunā*, the Islamic System of Economics.

2. In the preface to the English translation of *The Revealer, The Messenger, The Message* we have introduced the works of as-Sayyid aṣ-Ṣadr to our respected readers. And now that we are publishing the English translation of *Iqtiṣādunā* we find ourselves compelled to turn the attention of our readers to the preface of *Iqtiṣādunā* itself, where as-Sayyid aṣ-Ṣadr has mentioned six points which he deemed necessary for the readers to observe, and that also carefully.

We do not wish to say anything more than what the author has mentioned himself, except that these six points, which he introduced while writing the book and emphasized to his readers to keep in their mind while reading the book and studying its discussions, the same six points were in our mind also when we decided to publish its English translation. And we emphasize, alongwith the author, the careful observation of these points.

PUBLISHER'S FOREWORD

3. The English translation of *Iqtisādunā* was prepared by the Peermahomed Ebrahim Trust of Pakistan at our instigation. After completing the translation it was submitted to us, but at that time we did not have the means to be sure and satisfied about its authenticity. So it remained with us until we found the person who could check and make up the defects in the translation. Then again just by the way we were confronted with some defects, and fortunately we found a person who was familiar with both the Arabic and English languages with qualifications in economical studies. He compared the translation with Arabic version and corrected, according to his own views, as much as he could.

At this point we reached the utmost stage of our abilities and facilities for correction of the translation, and so we deemed it right to publish it, by the help of Allāh; and thus it cannot be said that our efforts were reckless and it would have been better to delay the publication. After all these efforts we shall gladly accept any criticism or observation, and welcome any suggestion to improve our work. We hope to correct the defects and mistakes with which we may be confronted in future.

4. Now, by the grace of Allāh, we are publishing the last part of the English translation of this book, and we ask Allāh, the Glorified, to bless this work and to generalize its benefit as He did for the original Arabic version. And may He accept our work sincerely for His Holy Self. He is the best Master and the best Helper.

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Volume Two

Part Two

CHAPTER ONE

THEORY OF POST-PRODUCTION

I – THE THEORETICAL BASIS OF THE POST- PRODUCTION DISTRIBUTION AMONG THE AGENTS OF PRODUCTION¹

The Upper Structure:

al-‘Allāmah al-Ḥillī, the Muslim research scholar (*muḥaqqiq*) mentions in his book *ash-Sharā‘i*, Chapter on “*Wikālah*” (Agency) that *wikālah* for the labour work of cutting wood or works of similar kind is invalid. For instance, if a person appoints another person as his *wakīl* (agent) to cut wood from the forest on his behalf, the *wikālah* will be null and void. The appointer will not become the owner of the wood cut by his agent, the reason being, that the labour work of cutting wood, from the forest or other similar labour-works in nature produce no effect or special right for a person until and unless the person himself performs the labour or spends directly his efforts in the work of cutting wood or grass or similar labour-works. The purport of the *sharī‘ah* (law-giver – the Prophet) as per the interpretation of the Muḥaqqiq (al-Ḥillī) to the *iqā‘*

¹ While dealing with the theory of pre-production distribution, we were seeking to determine the right individuals acquire in respect of natural raw materials as a phenomenon of their distribution. As these rights were the outcome of labour, the inquiry was directed to the determination of the role of labour as regards these natural wealths. Therefore, the natural wealths which labour changes in this sense becomes included in the post-production wealths. On account of this, the two inquiries, the pre-production inquiry and post-production inquiry — become partially interlaced. This interlacing makes it necessary to take great care in making explicit when contributing ideas from either of the fields of distribution.

(performance) of those works or acts directly by the individual person himself.

1. Here is the actual text (quoted from the above-mentioned book of) al-‘Allāmah al-Ḥillī: “As for the acts in which *niyābah* (agency) does not enter (legal force) are those acts in which the governing rule thereof pertains the purport of the *shāri‘* (law-giver) to the *iqā‘* of these acts by the person himself; for example *ṭahārah* (ritual purification)...; *ṣalāt* (obligatory prayers), as long as one is alive; *ṣawm* (fasting); *i‘tikāf* (spiritual retirement); obligatory *hajj* for one who can afford; *īmān* (faith); *nadhr* (vow); *al-qasm bayna z-zawajāt* (just deal out between one’s wives); *zihār* (a man’s comparing the back of his wife with his mother or any female within the prohibited degree of marriage; *li‘ān* (charging one’s wife with adultery); *qadā‘i l-‘iddah* (completion of the waiting period for a divorced woman or after the death of her husband before contracting a second marriage); *janābah* (major ritual impurity); *itqāṭ* (finding of a property of unknown ownership from a public place); cutting of wood and grass.”

2. This occurs about *wikālah* in the book *at-Tadhkirah* by al-‘Allāmah al-Ḥillī: “As for the validity of *wikālah* in *mubāḥ* (permitted) things like hunting, cutting of wood or grass, reclamation of waste lands, taking in possession of a quantity of water or a thing like it, require more classification.”

3. It is mentioned in *Kitābu l-qawā‘id*: “Indeed in appointing a *wakīl* for proof of properties of *mubāḥ* things like treasure trove or found property of unknown ownership, hunting or catching of game or fish, or labour of cutting of wood or grass, require to be reviewed.”

4. A number of jurist sources, like *at-Taḥrīr*, *al-Irshād*, *al-Īdāḥ* etc. share this opinion.

5. Several other jurist sources have not been content with expression of doubts about *wikālah* in such matters or leaving it to be reviewed but have been explicit about its invalidity, in agreement with the *sharā‘i* like *al-Jāmi‘ fi l-fiqh* and *as-Sarā‘ir*, in respect of hunting as ash-Shaykh aṭ-Ṭūsī in his book *al-Mabsūṭ* – in some of the prints – Invalidity of appointing a *wakīl* in case of the reclamation of the waste land and also it is said by: Invalidity of the appointment in case of cutting wood and grass.

6. al-‘Allāmah al-Ḥillī links together, *wikālah* (agency) and *ijārah*

(hire-work) and then states that when *wikālah* is in-productive in regard to those works then *ijdrah* is also like it. So just as the appointer does not acquire the ownership of cutting of wood or hunting a prey or reclaiming a waste land by the labour of his agent, so naturally the hirer of the labour does not acquire the yield of the labour of the workman hired by him.¹ Here is the text of what he writes saying in *at-Tadhkirah*: “If we allow that *wikālah* to be valid in such things then we will allow that hiring too to be valid in them. So if a man hires labour to cut wood, or to carry water or to reclaim a waste land, his doing so will be valid and he will become the owner of the product of the work of the hired labour. But if we deny the validity of it thereby we deny the validity of it hereto so the act will be for the hired person.

The research scholar al-Iṣfahānī confirms in the book *al-Ijārah* that “hiring of labour (on nature) is ineffective in giving title of ownership to the hirer of the labour, that is, one who pays the wage money, as to whatever thing the workman acquires possession of through his physical labour. So if the workman takes possession of the property he secures, then it will be his and the hirer will get nothing.”

7. al-‘Allāmah al-Ḥillī mentions in *al-Qawā‘id*: “If a man catches game or cuts wood or picks up grass with the intention that whatever he secures by his work will be for himself and for someone else, that intention of his, will be ineffective. Whatever he acquires will be wholly and solely his.”²

8. (It is given) in the *Miftāḥu ‘l-karāmah* that ash-Shaykh aṭ-Ṭūsī, al-‘Allāmah al-Ḥillī and Muḥaqqiq al-Ḥillī, all the three, have given decision that if a person secures possession of some natural wealth with the intention, that what he secures will be for him and for someone else, (such intention will be ineffective in law), the whole of it will be his.

9. It occurs in *al-Qawā‘id* of al-‘Allāmah al-Ḥillī: “If a man lends a net for catching game with the intention of getting share in the game, the bagged game shall go to the hunts-man and remuneration will be due to him in respect of his use of the net. A number of other jurist sources like *al-Mabsūt*; *al-Muhadhdhab*, *al-Jāmi‘* and *ash-Sharā‘i‘* confirm it.

10. In the discussions about hunting in the book *al-Jawāhir* of al-

¹ Vide Appendix XIV

² Vide Appendix XV.

Muḥaqqiq an-Najafī there is: “If a man usurps a tool of hunting and bags game with it, I find no jurist opinion to the contrary that the bagged game will be the property of the hunts-man and not of the owner of the tool, in spite of the fact he has secured the game with the tool which it was illegal for him to make use of, as such ownership of the *mubāḥ* thing was acquired by direct labour and the usurper has realized it in that way. Assuredly, the rent of the tool shall be due from him as in the case of the rest of the usurped accessories, nay, rather this even when he does not catch game with it so as to make good for the loss of advantage passing out of his hand.”

11. This is from the book *al-Mabsūṭ* the text of what the eminent ash-Shaykh aṭ-Ṭūsī says in respect of partnership: “If a person authorises another person to catch game on his behalf and that person goes out to catch the game with the intention that the bagged game shall be for the one who ordered it and not for him whose property will be the bagged game? There is one opinion that it is a case like a water carrier’s carrying water with the understanding that what he earns will be shared between them and the price of water will be his, i.e. the one who does the work of carrying water and his partner shall be entitled to nothing out of it. So in this case also the bagged game will be the property of the man who did the work of the bagging the game singly by himself and not the property of the person who ordered him. According to another view it will be the property of the man who ordered him, for that was the intention of the huntsman in the catching of the game and intention will be taken into consideration. But the first view is sounder.”

12. al-Muḥaqqiq al-Ḥillī mentions in *ash-Sharā’i’*: “If a man gives, for example, animal and another man his water-skin to a water-carrier with the understanding of sharing in the earnings therefrom, no partnership will take place, so in such a case what-ever is earned will belong to the water-carrier and compensation for the use of the animal and the water-skin will be due from him.”

From the Theory:

The whole of this upper-structure reveals the basic fact regarding the general theory of post-production distribution, and consequently the material difference between the Islamic general theory of post-production

distribution as it obtains in the capitalist doctrinal (applied) economics.

However, instead of beginning with inducement of the theory from the upper-structure we have preferred to begin with the formulation of a general idea and a common conception of the nature of the theory of post-production distribution through presentation of an illustrative example of it from the capitalist doctrinal system of economics so as to know the scope and range which the doctrinal theory in regard of post-production distribution will have to pursue invariably.

After having given (the example of) the theory in the capitalist-frame, we will present the Islamic theory of the post-production distribution as we hold it as far as to give it a definite form and to bring to light and show clearly the difference between the two theories. Then we will come back to the upper-structure given above – in order to strengthen and support our assumptions about Islamic theory as also to explain our method of adducing them from that upper-structure in which its basic guide-lines and main features are reflected. Thus, the journey of our inquiry will be completed in three stages.

1. The Illustrative Example from Capitalist Economics:

In the conventional school of capitalist economic system, the process of production is, usually reduced to the main factors engaged in the process and the general idea of the distribution of the produced material is based on the partnership of those factors in the material theory, have produced, so every constituent factor gets its share in accordance with role in the process.

It is on this basis that capitalist system of economy basis its distribution of the produced goods or its cash value, in four shares (portions). They are:-

1. Interest,
2. Wages,
3. Rent,
4. Profit.

Wages are the share of human labour or the worker by his being the prime factor in the process of production in the capitalistic theory. Interest is the share of the advanced capital (lent, borrowed); profit, the share of the joint capital used in actual production and rent expresses the

share of nature of specific words, lands.

There have been several modifications in this capitalist method of production on the formal side, wages and profit are included in one group, in the belief that profit is a form of wages for a specific kind of labour, the work of organizing which the organizer of the project (entrepreneur) conducts by bringing together various factors of production, such as capital, nature and labour and his fitting and organizing of them together is the process of production.

On the other side rent is given a wider meaning which goes beyond its terms of (a return form) land, and discovers various kinds of rents from other fields. Likewise, the preferred view of some to give capital a more comprehensive meaning covering all the forces of nature including land.

In spite of these formal modifications, however, the essential view regarding the capitalist distribution has remained intact and firmly fixed during all the adjustments and has undergone none whatsoever of change. This view is the observance of all these factors of production on an equal footing and assigning to everyone of these factors, its respective share from the produced material as a share-holder in the operation and within the terms of its partnership with all the other factors in the completion and production of that produced material. The workman receives the wage according to the very method and on the basis of the very doctrinal theory according to which capital, for example receives its interest, for either one of them, in the established capitalist usage is an agent of production and participant force in the organic mechanism of the operation. So it is but natural that the produces be distributed among their producing factors in proportion fixed by the law of demand and supply and such of the forces as govern the distribution.

2. Islamic Theory and its Comparison with Capitalist Theory:

Islam rejects altogether this material view of the capitalist doctrine and differs from it basically; for it does not put on equal footing the various factors of production, nor considers it a satisfactory form for settling the matter of the distribution of the produced material upon the proportion fixed by the law of demand and supply as the capitalist system

of economy does. On the contrary the general Islamic economic theory of post-production distribution regards the produced material from the natural raw material as the property of the producing man – the workman – alone. As for the material means of production and various tools which a man makes use of in the operation of the production, these have no share from the produced material itself. They are only means which present to man services for breaking in and the harnessing of nature to the object and purpose of production. If these means happen to be the property of an individual other than the workman, then it is a due on the producing man has to pay to the individual who owns these means in consideration of the services through which the producer has reaped the benefit. The money which the producer gives to the owner of the land or the owner of the implement or the owner of the tools which contribute to the work of production does not represent the share of the land or the tools or the instruments themselves in the produced thing, in their capacity of one of the factors of production but means a compensation to the owners of those means, paid by the workmen for the services they have rendered him by allowing him to make use of the means they owned. So in case there does not happen a definite owner for these means other than the producing man, then the term compensation will be meaningless as in such case, the benefit will be a gift of nature not a bestowal of another man's service. So in the Islamic theory of post-production distribution the producing man is the real owner of the material produced from the natural raw material and the material factors of production have no share in those produced material. It considers the producing man only a debtor to the owners of the means he has made use of in the production, so he is responsible for paying compensation to them in consideration of the services the means they owned have rendered him. Then the share of the participant material means in the operation of production bear the mark of compensation in consideration of service rendered and represent (lit: express) a debt, the payment of which is an obligation upon the producing man and does not mean the equalization of the material means and human labour or a partnership between them in the material produced on the equal basis.

In the course of our continuation of the discovery of the general theory of the post-production distribution we shall come to know the theoretical justification for the compensation which the owners of the

material means obtain from the producing man, in view of rising in the productive operation, the means which they own.

So the difference between the Islamic theory of post-production distribution and the capitalist theory in this respect is very great.

This difference between the two theories, Islamic and capitalist, arises from the determination of the status of man and his role in the operation of production. The role of man in the capitalist view is that of means which serve production and not the end which production serves. He is, in this respect, on the same footing with all the forces such as nature and capital sharing in the production. Therefore, he meets with his share from the natural material as a share-holder in and a servant of the production. Therefore, the theoretical basis of distribution of the produced material among man and other material means which share with him in the operation of the production becomes one.

As for the status of man in the Islamic view, it is that of an end not that of means. Therefore, he is not on equal footing with and of the same orders all the other material means in the matter of the distribution of the produced material among man and all the material means on the same level. On the contrary it considers the material means of production servants of man for the accomplishment of the operation of production since the operation of the production is for the sake of man and as such the share of the producing man differs from the share of the material means on the theoretical basis. Hence if the material means belong to a man other than the producing one and the owner of them presents them to make use of them in the production it is a part of his right that the producing man gives him compensation in consideration of the service rendered by him. So the compensation here constitutes debt the payment of which is a responsibility of the producing man in view of the service rendered and does not mean theoretically the partnership of the material means in the produced material.

Thus the status of the material means – assigned to it in the theory of Islam prescribes for them to demand from the producing man compensation as his servants and not as his partners, similarly the status of man in the operation of the production as its end prescribes for man to be the sole owner of the right to the natural material which Allāh the High has prepared for the service of man.

A most important phenomenon which reflects this material difference

between the two theories, – Islamic and Capitalist – is the standpoint of the two system of economics, regarding capitalist of the natural raw material. The Capitalist doctrine permits capital to practice this kind of production. For it is within the power of the capital to hire labourers for cutting the wood from the forest or extracting of petrol from its wells, and pay them their wages – and this represents all the share of the labourer according to the capitalist theory of distribution – and the capital becomes the owner of whatever quantity of wood cut or the mineral products extracted by the labourer and the sale of it, at a price which suits his sweet fancy, is his right.

As for the Islamic theory on distribution, there is no room for such kind of production¹ because capital obtains nothing by way of exploitation of labour for cutting wood or extracting of the mineral and the multiplication of the tools necessary for them, as long as Islamic theory has made direct labour a necessary condition in the matter of acquiring of ownership of natural material and confers solely upon the workman, the right of ownership of the wood he cut or the mineral he extracts. Thus it ends the appropriation of the natural raw material through waged labour. The domination of the capital over these materials which it had appropriated under the capitalist theory simply because of its ability to pay wage and the multiplication of the requisite materials for it, disappears and the domination of man, over the natural materials takes its places.

However the disappearance of this capitalist mode of production is not an accidental event or a passing manifestation or a partial different between the Islamic theory of distribution and that of capitalist economic system but expresses in an explicitly clear form and on the theoretical basis, as we have learnt – the polar opposition between them and the true nature of the content of the Islamic system of economy.

¹ For what we have learnt from the upper-structure, viz interdiction of procuration (appointing of agents) by Muḥaqqiq al-Hillī in *ash-Sharā'i* for the work of cutting wood and in the procuration work in *mubāḥ* things, interdiction of appointing of an agent for the work of rehabilitation, by ash-Shaykh aṭ-Ṭūsī as transcribed from some copies of his book *al-Mabsūṭ* and the confirmatory assertion by al-Iṣfahānī in the book *al-Ijārah* according to which a hirer of labour does not become owner of whatever quantity of natural material his labourer comes by on the ground of hire-contract.

3. Inducement of the Theory from the Upper-structure:

So far we have presented the Islamic post-production distribution theory hypothetically to the extent it was necessary for the comparison and contrast between it and the capitalist theory as regards its theoretical basis of the distribution of the material among the factors of production.

However to prove the soundness of our conception of the theory it is necessary for us to revert to the upper structure given at the very beginning of our discussions so as to draw from it that aspect which we have supposed as regards the Islamic theory and show its practical religious significance and the extent of its consonance and concord with the conception of it we have presented.

The precepts which we have presented in the upper-structure lay down:

Firstly: It is not valid for the principal to reap the fruits of the labour of his *wakīl* (agent) on the natural raw materials. Hence if an individual appoints another person his *wakīl* for cutting wood from the forest. For example, it will not be valid for him to appropriate the quantity of the wood his *wakīl* succeeds in obtaining as long as he has not conducted the labour himself and cut the wood, because the ownership of it which results from work is the share of the workman himself alone. This fact is quite clear from the first eight quoted extracts in upper structure.

Secondly: The hire-contract is like agency contract for in either case just as the principal does not become the owner of the materials which his agent succeeds in obtaining from nature. Similarly the hire of waged labour does not acquire the ownership of the natural material which his hired labourer secures possession of, simply because of the fact that he pays the requisite wages for the work, since those materials cannot be owned as one's property except by direct labour and work. This fact is clear from the sixty quoted extract.

Thirdly: That if a producing man who pursues labour to obtain natural materials makes in his work use of tools or materials of production which another person owns, there will be no share for these tools in the acquired (products) from nature. Only the producing man will

become a debtor to the owner of the tools for the payment of compensation in consideration of the use he has made of them during the operation of the production. As for the product, it will be wholly and solely the property of the workman. This is clear from the quoted-extracts nine, ten and twelve.

These three points are sufficient for the discovery of the post-production distribution theory which is based on the super-structure of all of these precepts. In the same manner it is sufficient proof of the soundness of the discovery of our theory and our giving to it the very context and features of it we have specified.

So the producing man becomes the owner of the natural material (wealth) he obtains from nature not as a share-holder and a servant of it but on account of the fact that he is the aim which the production serves. So he appropriates all the produced material (wealth), and the other forces and means which serve and take part in the production do not share it with him.

However these material means have claim upon the producing workman, who pursues the work of production against their services because they are deemed to be his servants and not because they are deemed to be on equal footing with him.¹

¹ It will be sufficient for us to arrive at these results theoretically from our summary of the later two of the three points the implications of which we have adduced from the upper-structure. So that even if we do not accept the first point, the structure of the theory we have built up will be sound. Let us suppose that the agent produces something from the natural raw material for his principal he does not become the owner of that material which he produces but (his) principal becomes its owner (these two are preferred). (Vide Appendix No. XV). For this does not contradict the principle which holds that “the producing man alone is the rightful owner of the material he produces because the producing man himself waives his right and he makes it over to another man when he purposes to acquire something from that for another man. The basis which holds that the producing man alone is the rightful owner of what he produces links the point with the dictum of the upper-structure to the effect that the material means of production do not share the produced material with the workman (the producer) and with the other point which holds that the capitalist does not become the owner of the material which the workman secures simply because of his buying the labour from the workman, and for furnishing with requisite equipments for the production.

Thus by making use of the upper-structure given above, we obtain the Islamic basis for the post-production distribution and prove in the light of it on the truthfulness of the conception we have presented according to Islamic theory upon comparison and contrast of it with the capitalist theory in that respect.

Now let us continue our work of discovery and let us take up the study and presentation of another aspect of it through the comparison and contrast of it with the Marxist theory of post-production distribution and the determination of the salient and outstanding difference between them.

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Thus the material difference between the thought of the principal's taking for himself the material his agent secures possession of and the thought of an individual person's appropriation of the material the person hired by him secures possession of became quite close. This second thought is capitalistic in its nature for it gives to cash and productive means directly the right of appropriation of the possible thing instead of human labour, contrary to the first thought acknowledges the right of the workman to the material (he produces) and regards upon his agency of another person for the cutting of wood from the forest, for example, as implied from the workman's giving the ownership of the quantity of wood cut and obtained from the forest by him and his waiving of his right to the material in favour of another individual.

II – STRIKING DIFFERENCE BETWEEN ISLAMIC AND MARXIST THEORY

The Upper-structure :

1. al-Muḥaqqiq al-Ḥillī writes in his *ash-Sharā'i* in the book *al-Ijārah*: “If a man gives another man an article to do some work on it for him, and if say, for example, a washerman or a bleacher is engaged for that job, then there will be a fair wage for the job. If it is not usual with the jobber to charge a wage and if it is one of the jobs for which there is usually a remuneration, then he can demand the remuneration, for he is the better judge of his intention. However, if it is one of the jobs for which usually there is no remuneration, no heed will be paid to the claimant of it “.

The commentator appends to it the following : If it be known from his intention that he performed the job gratuitously, then it will not be valid for him to put in his demand for remuneration.

2. al-Muḥaqqiq an-Najafī cites in his *al-Jawāhir* in the book “Usurpation”: If someone takes by force seeds and sows them, or an egg and hatches it without the consent of the owner, the opinion of many of the jurists is that the real owner is the one from whom the material has been usurped. Rather there is, on the authority of *an-Nāṣiriyyah*, nothing against this verdict but in *as-Sarā'ir*, there is a consensus on this. It is like the principle and norms of the juristic practice.

He (an-Najafī) also quotes another jurist who claims: The green crop and the young bird belong to the usurper because the usurped seed and egg are considered to have been nothing (at first). So the green crop and the young bird are new things which the usurper, as the result of his labour, owns them.

3. In the same book it is mentioned: If someone usurps a land and cultivates it or plants trees on it, then the crops and plants will belong to the planter, and I do not find any disagreement (on this point) among the (Muslim) jurists, on the contrary I find consensus in the book of *at-Tanqīh*. But the farmer has to pay rent of the land to the owner of the land (from whom he usurped).

This rule has been confirmed by some traditions. Here is one report of the tradition on the authority of ‘Uqbah ibn Khālīd who says: “I asked Imām aṣ-Ṣādiq (a.s.) about a person who had made use of a piece of land to raise crop on it without obtaining the consent of the owner of it. When the crop has ripen the owner of the land came along and told the man who raised the crop ‘You have raised crop on my land without my consent, so the crop you have raised on my land is mine, and I will pay you a remuneration for the labour you have expended on it.’ “ ‘Uqbah says: “Then I asked the Imām: ‘Will the crop be his or not?’ The Imām replied: ‘The crop belongs to the man who raised it, and the owner of the land will have rent for the use of the land.’ “

4. It has been mentioned in *al-Jawāhir* in the book “*al-Mazāri*”: In every case, whenever the agricultural contract become invalid it is upon the owner of the land to pay the wage of the labour. If the seed belongs to the labour, then the crop also belong to him, and he has to pay the rent of the land to its owner. But if the seeds are from the owner of the land, then the owner of the land will have the crop too, and he will be responsible for a due remuneration to the labour and implement. However, in case of the contribution of seeds from both of them, the yield shall be proportionately divided between both of them.

From this detail it may be elicited that the owner of the seeds will have the yield accruing from the seeds, be he the farmer who sows them or the owner of the land on which they are sown because it is the seed that constitutes the basic sub-stance of the raised crop. In case the seed belongs to the farmer, no right in the yield is found for the land and only the rent of it is due from the farmer to the owner of the land for the

use of the land for his (farmer's) seed.

5. It is given in *al-Jawāhir* in the book of "*al-Musāqāt*": In any case, whenever *musāqāt* (share-cropping contract over the lease of a plantation, limited to one crop period) become in-valid, the labour should be paid (according to the mutual agreement), and the fruit belong to the real owner because the growth (of the fruit) follows the original in ownership.

Here is an elucidation of the above text. When a person owns trees which need watering and looking after to bear forth its yield. The owner of the trees gets hold of a care-taker and delivers to him the trees, binding him with a contract entered into with him whereby the care-taker agrees to undertake to look after and water the trees and becomes in lieu of it a partner of the trees in yield according to the contract. So this kind of agreement entered into between an owner of the trees and a care-taker of it, the jurist term *al-musāqāt*, is applied. The jurists have specified the obligation of binding both the contracting parties to the contents of the contract if the term of the contract is to be completely fulfilled. But if the contract loses any of its term and conditions, then according, to *sharī'ah* it has no effect. In this case the juristic text we have cited above specifies that the yield, the whole of it, in case of the invalidation of the contract will be constituted as the property of the owner of the trees. The care-taker will have for his service and his labour of looking after the trees a due-suitable remuneration to which the juristic term *ujratu'l-mithl* (adequate payment) is applied.

6. *'Aqdu 'l-muḍārabah* (contraction of silent partnership) is a particular kind of partnership in which the worker agrees with the owner of the capital to carry in trade his capital on the basis of his sharing in the profit. In case the terms of the agreement are not fulfilled in any sense the whole of the profit will become the property of the owner of the capital, and the worker will have only a due remuneration in certain case as specified by the jurists in *al-Jawāhir*.

From the Theory:

We have until now revealed as much of the general theory of post-production distribution in the Islamic system of economy as was required, for the institution of the contrast and comparison of it with the

same theory, scientifically in the capitalist system of economy. Now we propose to continue our discovery of the guide-lines and distinguishing characteristics of the Islam in the course of its comparison and contrast with the theory of post-production distribution as it obtains in the Marxist system of economy and the demarcation of the most salient differences between the two theories.

We shall begin, as we did in our previous stage with the giving of an idea and a projection into prominence of the most salient difference between the two theories as we believe it, before applying ourselves to the discussion of the upper-structure till after when being afforded of having clearly envisaged conception of the aspects of differences and the doctrinal purport of this difference. We would return to the examination of the supper-structure in order to elicit from its proofs to support the correctness of our (hypostatized) conception and to establish it juristically.

1. THEORETICAL PROOF OF OWNERSHIP

We can sum up the difference between the Islamic theory and Marxist theory (of post-production distribution) in two essential points.

One of the two essential points is as follows:

The Islamic general economic theory of post-production distribution confers upon a working man the private ownership or a right or title to such ownership to every wealth which he produces by his labour on it, only when the basic material on which he carries out the work of production does not happen to be a natural wealth owned by another individual as his private property or such right or title to that property such as wood, the wood-cutter cuts from the trees of the forest or the birds in the air or the fish in the waters, their natural elements that a bird-catcher bags or a fisherman nets or mineral materials which a miner extracts from their mines or a waste land a farmer reclaims and renders fit for cultivation or a spring of water an individual digs up from the bowels of the earth; because all these wealths belong to no one in particular in their natural state, and (only) a productive labour carried out on them gives to the producer a private right to them. But the means of production, as we have already learnt do not share with him in the

ownership of the produce from these wealths.

However, if the basis material on which the man carries out his work of production, happens to be a material which is the private property of another person or to which some other person has acquired a right or title resulting from any one of the bases we have submitted in the Islamic general theory of post-production distribution, then this would mean that the ownership or right or title to the material having been accomplished on a previous distribution of it, there is no room for the conferring of such an ownership or right on the basis of a new production either to a man who works it, or to anyone of the means of production which he employs in carrying out the work of new production, so the one who spins yarn or weaves a fabric out of a quantity of wool which a shepherd owns, will have no right or claim to the possession or acquisition of the wool which he has woven into a fabric or to his partnership with the shepherd on the basis of the labour he has expended in weaving it into a fabric, but the whole of the woven fabric he has woven will be deemed as the property of the shepherd as long as he is the owner of the basic material – that is wool – since the shepherd’s ownership of it, neither lapses nor is destroyed by any other person’s expenditure of fresh labour on it in spinning it into yarn or weaving it into a fabric. This is to which we apply the term ‘the phenomenon of the constancy’ in respect of the ownership of a property.

Marxist general economic theory of post-production distribution, however, is the reverse of this. It holds that the worker who receives materials from the capitalist and upon which he expends his effort becomes the owner of it equal in proportion to the new exchange-value he contributes to it by his labour. On account of this, according to the opinion of Marxist theory the worker will be the legal owner of the produced commodity minus the value of the material he (the worker) receives, prior to his productive operation from the capitalist.

This difference between the Marxist theory and the Islamic theory rests upon the Marxist theory’s formation of a co-ordination of property with exchange-value on a side and of exchange-value with labour on another side. Marxist theory on the theoretical side believes that exchange value is born of labour¹ and ex-plains the maker’s ownership

¹ See *Iqtīṣādunā* (Eng. transl.), Vol. 1, pt. 1, p. 160.

of the material on which he has carried out his labour on the basis of the exchange-value which his work produces in the material and as a result of this it becomes the right of every maker of a thing when he contributes a new exchange-value to the material produced to become the owner of this value which he has embodied in the material by his labour.

Contrary to this the Islamic theory sets apart the ownership of a property and the exchange-value from each other and does not give the maker a right to the ownership of a material on the basis of the new exchange-value which the maker has contributed to the material but makes work the direct basis for a right or a title to it as we have come across in our inquiry and discussion of the theory of post-production distribution. So when an individual acquires ownership of a material on the basis of labour and the basis continues in existence, it will not be permissible for another person to acquire a new ownership to the material even if he were to contribute to it a new value by his labour.

Thus we can recapitulate the Islamic theory as follows. The material for the production of which a man carries out his labour when it does not happen to be already an owned property of another man, then the wealth which he produces will be wholly and solely his own property and all the other forces participating in the production of it will be regarded as the servants of the man and will meet their remuneration at his hand and not partners in the manufactured commodity – the produce on an equal footing with the man. But when the material happens to be an already owned property of some particular individual, then in such a case, it will continue to remain, according to the phenomenon of the constancy of ownership, the private property of that man whatever changes it may under-go as we saw in our example of the wool.

It may appear to some that this ownership – the wool-Owner's appropriation of the woollen fabric made from his wool, keeping to the owner of a material its ownership, would mean that the capital and the material forces in the production operation will appropriate the wealth produced in view of the fact that the (basic) material, in our example, the wool would be regarded economically as a kind of a capital, in the production of the woollen yarn and the woollen fabric – the reason being that the raw material of every commodity constitutes a kind of a capital. But the interpretation of the phenomenon of the constancy of the ownership of a property on capitalist basis is a misconception because the

conferring upon the owner of the wool the ownership of the woollen fabric which the maker of it has woven from his wool is neither constituted on the basis of the capitalist character of the wool, nor does it mean that the capital has a right to take possession of the commodity produced – the woollen fabric in its character as a participant factor or a basic material in the production operation of the woollen fabric.

Although, the wool constitutes a capital in the production of the woollen yarn or the woollen fabric, in its character as a raw material for this production, but the tools which are employed in the spinning and weaving process of it, they too bear the capitalist character and take part in the operation as another kind of capital. Yet neither the ownership of the wealth produced is conferred upon their owner, nor is the owner of these tools permitted to share the ownership of the fabric with the owner of the wool. That the Islamic economic theory of post-production distribution, in preserving intact the shepherd's right to the private property of the wool after the maker of it into woollen cloth, does not aim to single out capital for the conferring of the title to private property in the wealth produced is demonstrated by the proof that it does not confer upon the capital, as exemplified, by the tools and implements such a right, but only denotes the theory's regard for the constancy of right to the private property of the material (wool) firmly fixedly established before the production of yarn or the fabric from it. The theory holds the opinion that mere changing the form of a property does not exclude it from being the property of its first owner even if the change leads to the creation of a new exchange-value in it, and it is this to which we apply the name, the phenomenon of the constancy of the ownership.

In the Islamic theory the capital and the material forces participating in the production operation are not given a right to the wealth produced in their character as capital and the material forces participating in the production operation because in this capacity they are regarded only in their character as servants to the man nothing more – he being the chief pivotal point, the hub of the axis in the production operation, and it is in such a character that they meet with their remuneration from him – at his hand. The shepherd who is the owner of the wool in our example wins the right to the ownership of the woollen fabric only on account of the fact that the woollen fabric was the very wool which the shepherd was

possessing and not because of the fact that it constitutes a capital in the production operation.

2. THE THEORY'S SEPARATION OF THE OWNERSHIP (PROPRIETARY RIGHTS) FROM THE EXCHANGE-VALUE

As for the second point of the essential difference between the Islamic and Marxist theory of post-production distribution, it consists in this, that the Marxist theory, which gives to every individual a proprietary right to the wealth produced in proportion to the exchange-value which he embodies in the wealth produced, holds the belief – on the basis of its co-ordination of the proprietary right with the exchange-value – that the owner of the material forces and means which contribute their share in the act of the production of the wealth enjoys a share in wealth produced because these forces and means enter into the formation of the value of the commodity produced in proportion to the amount of consumption they have suffered during the act of the production of the commodity produced. The owner of the materials, which are consumed exhausted on account of its production becomes the owner of the wealth produced in proportion to the amount his materials contributed their share in the formation of the value of that commodity.

As for Islam, as we have learnt, it separates ownership from exchange-value so much so that even if we take it for granted scientifically that the materials made use of in the production of a commodity are included in the formation of the value of the commodity produced in proportion to the amount of their consumption. It does not necessarily mean that the benefit of the proprietary right in respect of the commodity produced be given to the owner of them for the materials used in production of a commodity are always regarded in the Islamic theory only as servants of the man, and their right is established on this basis alone.

This is the whole of the result of the separation of the ownership of the commodity produced from its exchange-value: the material forces which contribute their share in the act of the production of a commodity always receive their reward – on the basis of this separation as his

(man's) servants on both the bases, and not in the produced commodity itself as included in the formation of its exchange-value.

Inducement of the Theory from the Upper-structure:

Now after having presented the most striking difference between the two theories, Islamic and Marxist, of post-production distribution, as we conceive and suppose it, it is possible for us to put our finger specifically on the roots of this difference, and their justification from the upper structure we have advanced, as has been our method in the discovery of the theory from its above clearly expressed legislative explication.

All the quoted extracts from the upper-structure partake of one phenomenon. It is this that the material used in the act of production of the new commodity remains the property of a particular person, on account of this all the quoted extracts affirm the fact of the material continuing to remain the property of its previous owner even after its transformation in the process of production into a new commodity.

The commodity which its owner delivers to a hired man, to do work on it and changes it, remains, as stated in the first extract, his property. The hired man will not become its owner on the ground of his work on it even if he transforms it into a new commodity and creates a new value, of it and this because of the fact that it is an already owned property.

The worker (farmer) who usurps the land of another person and sows his seeds on it, will own the yield accruing therefrom as stated in the third quoted extract and the owner of the land will have no share of the yield, and that, because of the fact that the farmer is the owner of the seed and the seed is a constituent factor of the basic material which was transferred into the crop (yield) in the course of the tilling operation. As for the land, as a material force participating in the production, is regarded in the Islamic economic theory of post-production distribution a servant of the tiller-man, so he has to pay remuneration in respect of it to its owner. Islam, then, differentiates between the seed and the land and gives the ownership of the crop to the owner of the seed and not to the owner of the land notwithstanding the fact that both of them – the seed and the land – constitute capital in the economic sense and forces participating in the production. This clearly reveals the fact which we have already stated that the owner of the raw material which the

production makes use of and transforms it, only owns the material after its transformation because it is the very material which he owns and not because it bears the capitalist character in the productive operation. If that were not so, then, Islam would not have made a distinction between the seed and the land and would not have denied to the owner of the land the ownership of the crop while it has conferred it upon the owner of the seed in spite of the fact both the land and the seed partaking in the bearing of capitalist character in the general sense of the term capital which includes all the material forces in the production operation.

The fourth and fifth quoted extract agree in establishing the principle which the third quoted extract establishes. It is that the ownership of the crop or the produce is conferred upon the one who owns the seed and it is not conferred upon the owner of the land or the owner of any other factors which give their share in the productive operation and bear the character of being capital in the productive operation.

And the last quoted extract confers the ownership of the profit to the owner of the capital when *muḍārabah* (partnership) contract is made null and void and does not permit its ownership or partaking of its ownership with him, because this profit even though it is mostly the result of the effort and labour which the working partner expended in selling and bringing the commodity before its consumers in a manner which made possible its disposal of it at a higher price. However this effort is only like the effort of the spinner or the weaver of the wool which the shepherd owned and has no effective force according to the theory as long as the material in working partnership contract, wool happens to be a previously owned property.

Now there remains the second quoted extract in the upper-structure, for us to point out in particular. It is an extract which talks of a person who usurps an egg from another person and utilizes it to produce from it a living thing or a quantity of seed which he fructifies into a farm product. The extract states that according to one prevalent juristic opinion the produce – chicken or crop (grain) – is the property of the owner of the egg or the seed and according to another juristic opinion, the produce is the property of the usurper who carries out the labour of its production.

We see from that the extract which presents these two opinions that both of them arise juristically from the difference between the jurists as to the determination of the relation which subsists between the egg and bird

that comes out of its entrails, and likewise between the seed and the crop which is produced from it. The jurist believes that both the things are same, and that the difference between them is one of the degrees – like the difference between the wooden plank and the bed-stead made out of it will adopt the first opinion and will consider the person from whom the egg or the seed is usurped as the owner of the produce – the chicken or the crop. But the jurist who holds the opinion that the material – the egg or the seed – got consumed – destroyed – in the production operation and the thing produced is, in the general common sense, a new thing which arises from the destruction of the primary material on account of the work and labour of the usurper which he expended during his production operation (hatching or tilling) in the opinion of this jurist will be the owner of the produce (chicken or the crop) is the usurper because the produce is a new thing which the owner of the egg or the crop did not possess before this. Hence it is within the right of the one who produced it by his effort, to appropriate the produce in spite of his being a usurper.

It is of no importance to solve here juristically the conflict between these two opposite juristic opinions and to examine their view-points. Our aim here is to avail of its theoretical implication as regards our doctrinal stand-point of the theory for this juristic disputation reveals, with greater clearness and precision that the other quoted extracts of the upper structure do, that is giving to the owner of the wool the ownership of the woollen fabric made out of it, or that giving the owner of any primary material ownership of the material produced or made therefrom after carrying out production operation on it, is not based on the fact that the wool, or any primary material made use of in the production of the fabric or a commodity constitutes a kind of capital in the production of yarn or the fabric but only on the fact of the phenomenon of the constancy of owner-ship which lays it down that he who owns a material continues to retain its ownership as long as the material remains in existence and the Islamic justification lasts. For when the jurists differ as to the produce from the egg or the seed, they link their juristic stand-point in respect of that with their view-point regarding the nature of the relation with the material. This means that the jurist who gives the ownership of the thing produced from the material which was usurped from him, does not hold that opinion on the basis of its capitalist sense and prefers to give its ownership to the owner of the egg or the seed on

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account of the fact that he is the owner of the capital or anything produced in the production operation. Now, if this was the basis of the preference, the result of the opinion among jurists in accordance with the unity or the diversity of the material would not have juristically differed because material made use of in the production operation constitutes capital under all circumstances, it being all alike whether it got destroyed, depreciation in the process of production or materialized in the produced thing which resulted from it and from the capitalist point of view it would have become necessary for the jurists to give the ownership of the produce to the owner of the material, the egg or the seed whatever relation there subsisted between him and the material. But contrary to this point of view they give the owner of the material, like seed for example, the proprietary right to the crop only when it is established according to the common usage that the produced thing is the self same thing in a particular state of its transformation. This clearly established the fact that giving the ownership of the commodity produced to the owner of the material and not to the one who carries out work on the material to produce, rests on the basis to which we have applied the name of the phenomenon of the constancy of ownership and does not receive Islamic justification from the capitalist point of view which says that capital owns the commodity produced and that the labourer is an employee of the capital and requires to be paid wage for the work done by him.

Thus we understand clearly the extent of the theoretical difference between the Islamic explanation of the giving the ownership of the wealth produced to the owner of the primary material used in the produce and its explanation on the basis of the capitalist point of view.

3. THE GENERAL LAW OF COMPENSATION FROM THE MATERIAL SOURCES OF PRODUCTION

The Upper-structure:

i. It is valid for a producing man to take on rent from another man tools or materials he needs them for his work and pay to the owner of the tools or materials a compensation agreed upon with him. This

compensation will be regarded a rent to the owner of the tools in consideration of the part they play in the production operation and a debit charged to the account of the producing man which he will have to pay irrespective of the extent (amount) and the nature of earnings which are acquired from the productive operation. About this, the jurists are unanimous.

ii. Just as it is valid to take on rent a plough or a weaving boom, likewise it is valid for a producing man to take on rent a land from one who holds private proprietary right to it or its ownership. For example, if you happen to be a farmer you can make use of another person's land by an agreement with him and pay to him a corresponding compensatory rent against the service his land renders in the productive operation. About this there is an agreement among the majority of the Muslim jurists. However, there are some *aṣḥāb* (companions of the Holy Prophet) and a few Muslim thinkers who deny the legality of the letting out on rent the land relying upon specific traditions of the Holy Prophet. We will, Allāh willing, take up a study and examination of these traditions in our future discussion and explain that they do not go against the prevalent juristic opinion.

Similarly, it is lawful for a man to hire a worker for stitching of clothes, spinning of wool, selling book and the transaction of business. When the hired person has completed the assigned task, it is obligatory upon the employer to pay him the fixed wages (agreed upon).

iii. Islam has laid down a system of constitution of a stipulated partnership between an owner of a land and a farmer according to which the farmer agrees to cultivate the land on condition of the land owner participating with him in what accrues from his labour and the portion of each from the aggregate produce is determined on fixed percentage.

Let us concentrate on the '*aqdu 'l-Muzāra'ah* (sharecropping contract) from ash-Shaykh aṭ-Ṭūsī's book *al-Khilāfah*, in which he explains the implication of *al-Muzāra'ah* and its legal limitations. He writes therein, it is permissible for him – that is, the owner of the land – to give his land to another person to raise something on it, on condition that the land and the seed will be from him, and it is upon the *mutaqabbil*¹ (the acceptor, the assumer of the obligation) to undertake

¹ *Mutaqabbil* is the agent or factor who makes use of another's land.

the work of cultivation on the land, watering and taking care of it.

In the light of this we learn that the farming contract constitutes of two elements:

One of the two elements is the work of cultivation by the worker and the other, the land and seed from the owner of the land. On the basis of the term fixed as written by ash-Shaykh aṭ-Ṭūsī: "It is not permissible for the owner of the land to conclude '*aqdu 'l-Muzāra'ah*' by merely contributing his land and holding the farmer responsible for the labour of cultivation and providing of the seeds at the same time, since the contribution of the seeds by the owner of the land is a basic condition for the fulfilment of the farming contract as stated in the previous texts." When what is stated in this text about seeds is finalized then we can understand in the light of it whatever has come from the Prophet as to the prohibition of the *mukhabbirah*, which is a kind of *Muzāra'ah* agreement in which the owner is required to give the land, and not required to give the seeds. In this way, we learn, from the terms given in the text of which ash-Shaykh aṭ-Ṭūsī has written that to bind the owner of the land to give seeds to the farmer and upon the farmer is to take the cultivation work on the land is the basic condition of the farming contract. Without this the contract would not prove sound.

iv. The responsibility of the owner of the land in the contract is not confined to the mere providing the land and the seeds, but also extends to the expenditure of the soil if the soil requires manure. al-‘Allāmah al-Ḥillī has stated in *al-Qawā'id* "If the ground needs manuring the owner of the land should buy it and the farmer shall spread it on the ground." This has been confirmed by a number of juristic sources like *at-Tadhkirah*, *at-Taḥrīr* and *Jāmi'u'l-maqāsid*.

v. *al-Musāqāt* is another kind of contract which resembles the farming contract. It is a kind of agreement between two persons one of whom is the owner of the trees and tender plants, and the other is a person possessing the skill of watering of them in order to bring forth their yield.

In this contract the worker binds himself to water the trees and sprouts till they bear their yield. In return for it he shares with the owner the yield on the basis of a percentage rate agreed upon in the contract.

Islam allows this contract as has been given in many of the juristic texts.

vi. *al-Muḍārabah* is a legal contract in Islam. In it the worker

enters into an agreement with the owner of the capital to traffic with his capital and sharing in the profit on percentage basis. If the person is able to make profit from the traffic of his capital it will be divided between him and the owner of the capital according to what has been agreed in contract. If a loss is suffered then it will be borne by the owner of the capital alone, and for the worker sufficient is the lost of his labour and efforts rendered null and void. It is not permitted to the owner of the capital to make the worker bear this loss, for if the worker gives a surety against loss under any condition then the owner of the capital will be entitled to no profit as has been stated in the tradition reported on the authority of ‘Alī (a.s.) which says: “Whoever guarantees a merchant (to pay back the capital he has taken from him), for him (the merchant) is to receive his capital and he will have no share in the profit (of that capital).” In another tradition it has come: “Whoever guarantees (the benefit of) *al-muḍārabah* (silent partnership) (in favour of the owner of the capital) – i.e. to hold the agent of *muḍārib* (speculator) responsible for the (benefit of the) capital – for him (the owner of the capital) is to receive his capital and he will have no share in the profit (of that capital).” So the fulfilment of the condition of leaving the risk on the part of the owner of the capital and the agent’s not giving him the guarantee for the safety of his capital are the basic condition for the legal validity of the *muḍārabah* contract, without this it will not be partnership but a loan contract, and the profit will all be for the agent.

If the agent enters into an agreement with the owner of the capital to traffic with it, it is permissible for him, if he gets another agent who is satisfied with a less percentage of the profit to hand over to him the capital to traffic with it and partake the difference between the two percentages without undergoing any labour in earning it. For example, he makes an agreement with the owner of the capital on the condition of having the profit and then makes agreement with another agent who is content on the basis of a quarter of the profit, then he makes a gain of an extra quarter of the profit in this way without putting himself to the trouble of doing any work. (And this is not valid in Islamic law.)

al-Muḥaqqiq al-Ḥillī writes under the section of “*al-Muḍārabah*” of his book of *ash-Sharā’i’* that this action is illegal, saying: “Whenever an agent gives a capital to another agent as *al-muḍārabah* with the permission of the owner of the capital on the basis of sharing the profit

between the owner of the capital and the second agent, there is no objection in this matter. But if it is not so, that is, the first agent shares the profit with the second (agent), this is not permitted, since the first agent has done nothing.” It has come in a tradition that someone asked the Imām (a.s.): “Is it lawful for someone who has taken a capital (from someone else) on the basis of *al-muḍārabah*, to make a third person share with him in that capital with less profit (for the third)?” The reply was “No.”

vii. Lending of money on interest is *ḥarām* (prohibited) in Islam, that is, lending money to another person for a fixed period of time and the borrower’s returning at the time agreed upon, the principal with interest is *ḥarām* in Islam. Lending of money without interest is only permissible, so the lender can ask only for the return of the money he lends without any addition to the principal however slight. This precept is considered Islamic in the degree of its clarity and non-ambiguity to rank with the necessities of Islamic legislation.

The following sacred verses of the Holy Qur’ān pointing to it are sufficient:-

Those who devour usury shall not rise again except as he rises, whom Satan of the touch prostrates; that is because they say, “Trafficking is like usury.” Allāh has permitted trafficking, and forbidden usury. Whosoever receives an admonition from his Lord and gives over, he shall have his past gains, and his affairs committed to Allāh; but whosoever reverts – those are the inhabitants of the Fire, therein dwelling forever. (2:275)

O believers, fear you Allāh; and give up the usury that is outstanding, if you are believers. But if you do not, then take notice that Allāh shall war with you, and His Messenger; yet if you repent, you shall have your principal, unwronging and unwronged. (ibid. 278-9)

viii. The last sentence of the (above quoted) verses of the Holy Qur’ān which restricts the right of the creditor to the principal sum lent by him and which permits the return of his money if he repents is a clear proof of the order of prohibition to lend money on interest and the

unlawfulness of (charging) any kind of interest however slight it may be for that constitutes an inequity from the implied sense of the verse of the Qur'ān on the part of the creditor towards the debtor.

ix. It occurs in the tradition of the Prophet "Usury is the worst of gains. Allāh fills the belly of the one who devours it with the fire of hell to the proportion of its amount. And if he earns money therefrom neither will Allāh accept his work nor will he cease to be under the curse of Allāh and the angels as long as a *qīrāt* (weight, Eq.=1/16 dirham = 0.195g) of it remains in his possession.

x. *al-Ju'alah* (pay, wages, allowance, reward) is legal in Islamic *sharī'ah*; that is, one promises to do an allowable intended work. For example, when one says he who finds out a book he has lost, he will have a *dīnār* or he who tailors his garment will have one dirham. The *dīnār* or dirham is the return the owner of the book or the cloth takes upon himself to pay to one who does the specific actual work in connection with his property. It is not necessary that the wage be a specified sum such as a *dīnār* or a dirham. It is permissible for a man to make it unspecified in its nature that is he may say that whosoever cultivates this ground of mine, he may have the half of the produce; or the one who brings back to me my lost pen, he will be my partner for the half of it; as has been specified by al-'Allāmah al-Ḥillī in *at-Tadhkirah*, by his son in *al-Īdāh*, by ash-Shahīd in *al-Masālik* and by the Muḥaqqiq an-Najafī in *al-Jawāhir*.

The difference between the *ju'alah* and hiring on wage basis juristically lies in the fact that if, you, for example, engage a person on hire for tailoring your garment, you become, according to the hire-contract, the owner of the service (profit) of the employee, that is the service (profit) of his tailoring work just as the employee becomes the owner of the wage specified in the contract. But if you stipulate with the man who tailors your garment to give him one *dīnār* for tailoring it you do not become the owner of (the service) of tailoring work just as the tailor does not become the owner of anything for which you are responsible unless he carries out the work. If he does the tailoring work then he will have due to him one dirham from you which you have stipulated to give him for the tailoring work.

xi. *al-Muḍārabah*, the tradition about which has been already mentioned in the sixth extract, is limited as defined in law, to the extent of commercial operations of buying and selling. If a person possesses

commodity (goods) or cash is permitted to enter into agreement with a particular factor to traffic with his goods or money or to buy goods with his money and sell it; and partnership with a factor in profit is on a ratio of percentage as mentioned in the sixth extraction.

al-Muḍārabah, however, is not valid in other than commercial orbit defined legislatively as buying and selling operations. If a person for example, possesses an article or tool of production, to enter into a *muḍārabah* contract with a factor (*‘āmil*) on the basis of it, for if he gives his tools of production to the factor to make use of it for production he will be entitled to impose giving to himself neither a share in the profit resulting from the production operation carried on with his tool nor in the produce on a ratio of percentage.

al-Muḥaqqiq al-Ḥillī, writes in the book of *al-Muḍārabah* of *ash-Sharā’i’* on account of this, saying: If the owner of a hunting paraphernalia, for example, gives it to a hunter on condition of one-third share in the game bagged with it and the hunter agrees to it and hunts the game, this will not constitute, a *muḍārabah* deal, and the bagged game shall be the property of the hunter who secures it and the owner of the hunting paraphernalia will have no share of it except rent due from the hunter in view of the use of the paraphernalia.

From this we learn that mere participation in the productive operation with tools and materials does not justify the owner of the tools or materials to claim a share in the profit. The owner of the tools or materials is allowed to share in the profit with the one who carries on the commercial activity only when he offers to him goods or cash and charges him with the duty of trafficking with it by way of buying and selling on the basis of sharing in the profit.

Just as constitution of *muḍārabah* and participation in the profit on the basis of tools of production so also the constitution of *muzāra‘ah* contract – a contract which we have come across in the third extract – is not valid for a person to share with the farmer in the agricultural product the farmer produces merely by giving to the farmer tools of production such as plough, bullocks and other such tools. However this kind of partnership is possible for one who gives as his share seed along with the land as we have learnt from the text from *ash-Shaykh aṭ-Ṭūsī*, mentioned previously.

xii. It is not valid for a man to take on lease a land or production-

tools on a specified rent, then lease it out to another person on a higher rent unless he does some work on the land or tools justifying collection of higher rent. If you happen to take a land on lease for ten dīnār, then it is not legally permissible for you to lease it out to another person and demand from him a rent fatter than the rent you have paid to the owner of the land unless you have expended labour on improvement and preparation of its soil justifying the difference which you acquire.

A group of great jurists, such as as-Sayyid al-Murtaḍā, al-Ḥalabī, aṣ-Ṣadūq, Ibnu 'l-Barāj, ash-Shaykh al-Mufīd, ash-Shaykh aṭ-Ṭūsī have specifically given this verdict in agreement with many traditions – which have occurred in this connection some of which are as follows.

a. Sulaymān ibn Khālid reports a tradition from the Imām aṣ-Ṣādiq (a.s.) that he said, “I dislike. I dislike that I take a quern (stone-hand mill for grinding grain) on a fixed rent and then lease it to another person on a higher rent than the rent at which I took it on lease, except when I make some change in it.”

b. On the authority of al-Ḥalabī (it is stated that) he says, “I asked al-Imām aṣ-Ṣādiq (a.s.): ‘Can I enter into a tenancy (lease) contract for a land holding myself responsible for one-third or one-fourth, then I enter into a tenancy (lease) contract in respect of the land With someone else holding him responsible for one-half?’. The Imām replied: ‘There is no objection’. I then asked, ‘Can I lease it for one thousand and lease it to someone for two thousand?’ The Imām replied, ‘No, it is not permissible’. I asked him, ‘Why?’ He replied ‘Because (in) this later (case the amount) is guaranteed, (in) the former (case fixed amount) is not guaranteed’ “. ¹

¹ The substance of the detail which this text and the text following is as under:

That is the difference in the two cases, the case of lease (tenancy) contract and the case of *muzāra‘ah* (farming contract) In the case of *ijārah* contract, when a person takes a land, for example, on hundred dīnār it is not permissible for him to give it on lease to another person for more than hundred dīnār if he himself did not work on the land. But in the case of *muzāra‘ah* (farming contract) when the man agrees with the owner of the land and the seed to cultivate his land and to share with him in the profit on the basis of, say, fifty percent, in that case it is allowable for the man who undertakes the cultivation of the land to give it after that to another man who manages the cultivation of it on condition of paying him thirty percent

c. In a tradition reported by Ishāq ibn ‘Ammār on the authority of aṣ-Ṣādiq (a.s.) it is stated that the Imam said: “If you take lease of land holding yourself responsible for gold or silver then do not lease it to someone else to make him responsible for more gold or silver fixed in the contract. But if you have taken the land on lease making yourself responsible for a return of one-half or one third then you can execute the same transaction with someone else holding him responsible for a higher share than you have made yourself responsible for in your contract because gold and silver are guaranteed amounts”.

d. Ismā‘il ibn al-Faḍl al-Hāshimī reports: “I asked Ja‘far ibn Muḥammad aṣ-Ṣādiq (a.s.) about a man who takes on lease from the sultan a tax-land for a fixed sum of dirham or for a fixed quantity of grains. He then lets it on rent and stipulates with the one who tills it that he will share in the half or less than half of the yield, then there is some surplus from the (yield of the) land, will it be fit for him to take it?” The Imām replied, “Yes if he digs a canal or does something which helps

and keep to himself twenty percent.

The text tries to explain this difference between the case of *muzāra‘ah* and the case of *ijārah* and mentions in justification of it that this is guaranteed (*maḍmūn*) and that is unguaranteed. The text (tradition) means to convey by this accounting of it (*maḍmūn/ghayr maḍmūn*, that is, guaranteed/unguaranteed) that the second lease of the land which he takes on lease from the one who had taken it on lease before him, that is the first lessee, is guaranteed for a fixed agreed sum in the first lessee contract, so a fixed rent is guaranteed in the contract itself. But the farmer who receives from the lease according to farming contract (*‘aqdu’l-muzāra‘ah*) to the land to work upon, guarantees nothing to the first lessee. So whatever the first lessee acquires as a result of the farming contract is not guaranteed in the farming contract itself. The tradition means to convey that the difference which accrues to the first lessee when he gives on lease the land for a sum higher than the sum he takes it on lease, is guaranteed in the lease-contract so it is invariably necessary that a work, prior to the contract, is carried out to justify this guaranteed gain, for the *sharī‘ah* does not acknowledge a guaranteed gain except in return for a work. As for the difference which accrues to the lessee, if he, for example, tills the land for half is not guaranteed in the farming contract itself, so it is not necessary that the first lessee does some work prior to the farming contract to justify this gain.

those who cultivate it, then the surplus will be his”.¹ He says, “I then

¹ The explanation of this tradition is: If a person takes on lease a land for one hundred dirham and then gives it to a farmer to cultivate it on the basis of partnership with the producer on percentage ratio, let us suppose half (fifty percent) and the half is more than one hundred dirham, it is not (legally) permissible for the lessee to pocket the additional sum, unless he expends some labour on it, such as digging of a canal or such like things.

Many of the jurists remark that this tradition leads to abolishing the difference between *ijārah* and *muzāra‘ah*. It is not permissible for a lessee leasing with less and then to take advantage of the difference between the two rents without any work. Similarly it is not valid for him, according to this tradition to acquire the disparity resulting from the farming contract.

On account of this, this tradition clashes in their opinion with the two previous traditions since these two traditions lay emphasis on the difference between the lease and farming contract and on the fact that the difference is not valid without work, but the difference resulting from the percentage ratio difference in the two farming contracts is valid.

But the fact of the matter is that the tradition go well together and there is no contradiction between them. The explanation of this by juristic mode of discussion is, that the two previous texts tackle a specific aspect, that is, the difference between the agreement of the lessee with the owner of the land and his agreement with the farmer who tills the land. The profit which the intermediary lessee between the owner of the land and the farmer who actually tills the land acquires, is the result of this disparity. Texts’ tackling of this aspect is that the profit which the person who is an intermediary between the owner of the land and the farmer who actually tills the land is the result of the disparity (in the percentage ratio) between the two farming contracts. It is legitimate even if the intermediary person does not do any work on the land before the farmer undertakes to till it for a less percentage ratio if the disparity between the percentage ratio is the result of the disparity of the two lease-contracts then it is illegal unless the lessee does specific work on the land before he lets it to a person who agrees to work for a less percentage ratio of return.

However the text of the last tradition in the report of al-Hāshimī considers the work of the intermediary lessee like the digging of the canal and such other things a condition for the validity of the farming contract he enters into agreement with the factor (the farmer) and consequently a condition for the legitimacy of availing of the extra resulting from the difference between what he gives to the land-lord and his appropriating what results from the actual work.

In order to know that import of this tradition does not crash with the two preceding traditions, it is necessary for us to know:

Firstly, the work which the text in al-Hāshimī's report of the tradition, considers the condition for the validity of the farming which the contract agreement intermediary lessee executes with the farmer who undertakes to till it is only the work which is carried out after the conclusion of the farming contract agreement not before its conclusion. This is borne out by his (the Imām's) words ("Yes, if he digs a canal or does something where-by he helps then it is his"). The meaning of his digging the canal or his doing work and his helping them thereby is that these works were accomplished (executed) after the conclusion of the farming agreement he entered into with them. But if the lessee digs the canal before he gets persons whom he farms out the field to share in the produce then this digging cannot be described as done for helping them or done on account of them. The words in the tradition are indicative of the fact, is the work which is made a condition in this text of the tradition, is the work which is done after the conclusion of the farming contract while as for the work which is made a condition in the two preceding traditions for the validity of the lease contract with a higher rent is the work of the lessee which he carries out before he leases out the land for a rent higher than the rent at which he takes the land on lease.

Secondly: The extra (a higher) rent is not supposed in this tradition in the contract. Its resulting is an accident. The lessee leases the land for a specified rent. The contract states that each of the contracting parties will have half of the yield and half is an unspecified amount by its nature. It is just possible that the amount may be less than the rent (return) which the lessee has paid to the person from whom he leases it. So likewise it may be equal to it or more than it. The extra amount about which the tradition talks is not supposed from the nature of the contract for the contract by its nature does not impose upon the farmer who actually tills the field to pay the intermediary lessee a higher rent than the intermediary lessee pays to the owner of the land. It only binds the working farmer in the contract to pay a specified ratio of percentage of the produce to the owner of the land irrespective of the amount, or the more or less of it than the amount of rent the intermediary hands over to the owner of the land.

When we look at these two matters we can say that the condition of work in this tradition — the tradition of al-Hāshimī, on the intermediary leases between the owner of the land and the farmer who actually tills the land is not for the sake of the justification of the more amount the intermediary obtains as a result of the difference between the amount of rent he pays to the landlord and the amount as per the ratio of percentage he receives from the farmer who actually tills the land. Let us take it, for example, that this ratio of percentage is half-half (fifty-fifty). Rather the stipulation of the term and condition of work upon the intermediary lessee is only for the validity of the farming contract and for the fulfilment of its legal substantives, as to its being a specific contract irrespective of any addition or demotion. That is because of the juristic assumption that in the contract of farming

asked about a person who takes on (tenancy) lease a taxed-land for a fixed sum of dirham or for a quantity of grain then lets it piece by piece or by *jarib* (a fixed land measure five-eighth [5/8 of an acre]) then there is surplus over the sum for which he had taken it on lease from the Sultan while he spends nothing on it, or he gives on lease of tenancy for cultivation giving those who cultivate it seeds and expenses of cultivation, then there is surplus over the sum for which he has takes it on lease will the soil be his or not? The Imām replied: ‘It will be his if he takes the lease, spends something on it and develops it then there is no objection to what you have mentioned’ “.

e. A tradition reported by Abū Baṣīr from aṣ-Ṣādiq (a.s.): that he

it is not sufficient that the landlord offers merely his land, rather, if the contract is to be valid, it is indispensable for him to bind himself to give something other than land. It is indicated in that juristic text which we have transcribed from ash-Shaykh aṭ-Ṭūsī in the third quoted extract. In this juristic text contribution of seed is made obligatory upon the landlord and the supposed thing which the text occurring in the tradition reported by al-Hāshimī tackles, it is not supposed that the intermediary lessee binds himself to give to the one who actually tills the land, seeds so it is indispensable for him that he may be made responsible to give his share of work with the tiller who farms out the field for a share in the produce.

From this it may be concluded that the owner of the land — the owner who holds the ownership of the land or owns the benefit accruing from it who engages a farmer who farms out the field for a share in the produce it is indispensable for him to join in the labour along with the farmer and contribute his share of labour or give seeds or expending of such like thing, his mere giving his land will not do.

The explanation of the text of al-Hāshimī in this light does not clash with its general meaning and retains intact the difference between *muzāraʿah* (farming) and *ijārah* (lease) as has been fixed by the two preceding traditions because the work, which makes allowable of giving the lease of land on a rent higher than the rent which he pays on his taking of it on lease is the work which he does before he concludes the contract of lease. Its importance lies in the validity of the lease-contract; while as for the work which makes it allowable for him to give it to a farmer who tills the field for a share say half, in the produce is a work which the intermediary lessee puts in before he executes the farming contract. Its importance lies in the validification of the principle of the farming contract not only for the validity in the disparity of the return..

said: "If you take lease of a land holding yourself responsible for (a fixed amount of) gold or silver, then do not lease it to someone else making him responsible for a greater amount, for both gold and silver are *maḍmūn* i.e. guaranteed".

f. There is a tradition reported by al-Ḥalabī on the authority of aṣ-Ṣādiq (a.s.) about a person who rents a house then he rents it to another for a higher rent than he had rented it. The Imām said "It is not proper for him to do so unless he makes some changes in the house".

g. It is in the tradition reported by Ishāq ibn 'Ammār that al-Imām al-Bāqir (a.s.) used to say: "There is no objection to a person's taking on hire a house, a land or a boat then give it on hire at a rent higher than the rent at which he hires it. Unless he made some improvement therein."

h. Samā'ah narrates a tradition saying "I asked the Imām about a man who purchases a pasture in which he used to graze his flock, at fifty dirham or for a less or more sum. Then he wishes to join with him those who used to graze their flocks along with him making them responsible for the price before he joins them with him! " The Imām said: "He may join whomsoever he wishes for a part which he gives something and if he joins them with him making them responsible for forty-nine dirham and his sheep be for one dirham, then there is no objection. But if he grazed his flock for a month, two months or for more months even then there is no objection if he joins them provided he makes it clear to them. However, it is not lawful for him to sell it for fifty dirham and graze his flock with them or for more than fifty dirham and not pasture with them unless he has already done some work on the grazing ground, the digging of well or cutting out of a canal, to help therein, with the willing consent of the owners of the pasture. Then there is no objection to his selling it at sum greater than at which he purchases it. Because he does some work so it is quite proper for him to do so."¹

Just as it is not permissible to one who takes on lease a land or means

¹ Hereby, the word '*bay*' is not intended in the specific sense of the word — buying or selling and this is clear from its use in context with his (unless he does some work . . . with the willing consent of the owner of the pasture). This shows that the pasture had its owner. This does not go well with the statement that the herdsman had in fact purchased it. You should take the general meaning of the word, *bay* ' applicable to taking on lease.

or tools of production to lease them at a higher sum, so, also it is not permissible to him to enter into agreement with a person for executing a work at a specific rate of return and then to make a contract with another man to do the work in return for an amount less than the amount which he obtains by his first agreement and keep for himself the difference between the two rates.

In the tradition reported by Muḥammad ibn Muslim states that he asked al-Imām aṣ-Ṣādiq (a.s.): “If a man takes to do a work on contract then he himself does not do that work but gives it to some other person, can he pocket the profit therefrom?” He replied: “No, unless he has done some work.” In another tradition, it is stated that Abū Ḥamzah asked al-Imām al-Bāqir (a.s.): “If a man takes to do a work (on contract) but does nothing and gives it to someone else to do it, can he pocket the profit (arising) therefrom?” The Imām replied: “No.” In a third tradition, it is stated that the Imām was asked about a tailor who takes a tailoring work on contract cuts the cloth and gives it to someone else for sewing, can he take the surplus? The Imām replied: “There is no objection, for he has done some work.” It is stated in a tradition reported by Mujma‘. He says that he asked Abū ‘Abdillāh, aṣ-Ṣādiq (a.s.): “Can I take a piece of cloth on contract to stitch it then give it to boys to stitch it at two-third of the amount? The Imām asked: ‘Did you not do therein any work?’ I replied: ‘I cut it and purchased thread for it’. The Imām replied: ‘There is no objection.’” In a tradition, it is stated that a goldsmith asked Abū ‘Abdillāh aṣ-Ṣādiq (a.s.): “Can I take a work on contract, then give it on contract to boys working under me for two-third of the amount?” The Imām replied: “It would not be proper unless you do the work with them.”

The Theory:

We examined in the preceding theoretical field that when work is carried out on a substance which was not already a property of someone else and were able to discover quite clearly the Islamic theory of post-production distribution in such a case confers upon the man who carries out the work, the whole of the wealth, on which he carries out the productive work and does not give a share in it to the material factors because they are forces which serve the producer of it and are not his

equals. They receive their compensation from the man and do not share the produce with him.

We also examined when the work is carried out on a substance (material) which is the property of someone else such as when a spinner spins into thread the wool which belongs to a shepherd, and learnt from the view of the theory in such a case that the material (substance) continues to remain the property of the owner of it, neither the work nor all the material factors which take part in the production operation will have any share of the produce, only a compensation the owner of the material (substance) shall have to pay to the material factors according to the service they render in transforming and improving of the material.

We now mean to study through the new upper-structure these compensations which the factor or the sources of production obtain under these circumstances and to find out the limits, kind and the theoretical basis of it subsequently.

With the delimitation of the kind of compensation which is allowed to the sources of production, such as labour, land, tools of production and capital, we will learn what is the extent to which Islam allows the acquisition of the earnings resulting from the ownership of one of these sources and what are its theoretical justification in these earnings on the basis of the ownership of these sources.

1. The Regulation of the Upper-structure:

Let us summarize from the process of the regulation of the new upper-structure, the general results which lead to it, and then to unite those results into a well-coordinated theoretical composition.

Two modes for the determination of the recompense to which the work is entitled are allowed according to the upper-structure of the Islamic legislation and it is left to the worker the right to choose either of the two modes he wishes.

One of the modes is, '*ujrah*' (a return hire, wage) and the other share in the profit or the produce. A worker is entitled to demand a specified amount of money of a sort as a recompense for the work he does, so he is entitled to ask for a share in the profit or the produce, and enter into agreement with the owner of the property (*māl*) for a percentage ratio of profit or the produce specified to constitute his recompense for the work

he does. The first mode is distinguished by an element of security. When the worker is content that he may be recompensed with a limited specified amount of money – and this is to which we apply the term, *ujrah* (recompense), the owner of the property will have to pay to him this specified amount of money without looking to the results of the work and to what accrues from the produce as to gains or losses. But if the worker chooses to join into partnership with the owner of the property in the produce and the profit on the percentage ratio basis with the hope to obtain a greater return then in that he links his fate with the work he pursues and thereby loses the security, since it is quite likely that he may obtain nothing if no profit accrues, but then as an offset against the security which he forgoes he obtains an open unlimited return surpassing by far the limited return because the amount of profit or produce is a quantity which is likely to increase or decrease, so to fix the return from work upon profit or produce will mean to subject it to increase or loss. So both the modes have their distinctive characteristic.

Islam has organized the first mode – *ijārah* – by the legislative enactments regarding *ijārah*. We have seen this in the first quoted extract and the second mode the sharing in the profit or produce by the legislative enactments regarding *al-Muzāra'ah*, *al-musāqāt*, *al-muḍārabah* and *al-ju'ālah* as we come across them in 3, 5, 6, 10 quoted extracts. In the farming contract worker-farmer can enter into an agreement with the owner of the land and seed to sow the seed in the land on the basis of both sharing between them the produce. And in the *musāqāt* (watering of the trees) contract the one who undertakes the work enters into agreement with the owner of the trees wherein he may bind himself to water and look after the tree in return for the owner of the trees giving him a share of the yield on the basis of a percentage ratio. In the *muḍārabah* contract the working partner is permitted to traffic with the goods of the owner on the basis of dividing the profit accruing from the selling of those goods. In the *ju'ālah* it is allowable for a merchant of wood for example, to declare his being ready to give any person who makes out of those pieces of wood bed-stead, half the value of the bed-stead, so in accordance with this, the worker becomes linked with the fate of the operation he carries out.

In both of these modes for the determination of return to the worker, it is not valid for the owner of the goods or money to impose any loss

upon the worker, rather the entire loss will be borne by the owner of the goods or money. If a worker has linked himself with him on the basis of *muḍārabah* contract deal then his expending his labour in vain is a sufficient loss for him.

However, the materials and tools or production – that is the things and tools are made use of in the course of production, like the spindle/spinning wheel or the plough, for example, if they are used for spinning wool or ploughing a field then the return for it is confined legally to one mode and it is compensation/wage, so if you wish to make use of a plough belonging to someone else or a net to be found from a certain person, then you may take the plough or the net on hire from its owner as is stated in the second quoted extract from the above given upper-structure. The owner of the plough or the net cannot demand a return for the use of his plough or net by way of a share in the profit. The enjoyment of a share in the profit on the percentage ratio basis, which is permitted to a labour, is legally forbidden to the owner of tools of production. Hence the owner of the tools of production has no right to enter into *muḍārabah* partnership with a worker on the basis of it, that is, for example, a man possesses a net, he cannot give it to a hunts-man to catch game with it and share the profit with him. This we see in the quoted extract no. 10 of the upper-structure. In the same way for a man who possesses a plough a (pair of) bullock and agricultural tools, to farm a field with it, it is not valid to give them to a farmer to use them for farming operation and participate in the produce with him as has already been stated in the quoted extract no. 3 of the upper-structure, since we learn from the text of ash-Shaykh aṭ-Ṭūsī that a farming contract can be made between two individuals on the basis of one contributing the land and seed and the other contributing labour, so for the contract's execution it is not sufficient that the party of the first part gives only tools of production. The same case applies to *ju'ālah* also where the agreement allows a maker of the wooden bed-stead to join the owner of the wood in the profit as has been given in the quoted extract no. 8 (of the upper-structure). The owner of the wood may make over half of the profit to anyone who makes bed-stead from his wood. But it does not permit him to enter into *ju'ālah* agreement whereby he gives one half of the profit to the one who provides him with the tool he needs for cutting the wood and constructing the bed-stead therefrom because *ju'ālah* in Islam

represents a return which a person determines before hand for a work he likes to be done for him not a compensation or return for any kind of service rendered.

Anyway, the tools of production have no share in the profit but can only demand compensation or rent so that the gain resulting from the ownership of the tools of production is narrower in the scope than the gain resulting from labour, for the former is allowed to one kind of mode of gain, while the labour is allowed two modes of gain.

The case of commercial capital is the reverse of that of the tools. No gain is allowed for it on the basis of wages. It is not permitted to the owner of the money to give his money on credit at interest, that is to say, to give it to a factor to traffic with it and demand from him for his use of it, for the wage enjoys the distinction of guarantee and disconnection with the outcome of the operation as well as the losses or profits with which it is fraught such a loaning of money is *ribā* (usury) and is *ḥarām* (strictly forbidden) by the Islamic law, as has been stated in the 7th quoted extract.

However the owner of the money or commodity is allowed to give his cash or stock-in-trade to a factor to traffic with it only on condition that if there accrues any loss from the trans-action he alone will bear it and if there accrues any profit from it, then he will share it with the factor on the agreed percentage ratio basis. This sharing in the profit, with the bearing of the burden of loss is the only mode which the commercial capital is allowed to adopt.

From this we learn that the tools of production and the commercial capital are the reverse of each other as to the lawful mode of earning gain. Each one of them has its own mode while in both the modes of earning gain is allowed to the agent (*‘āmil*).

As for the land, a rugged ground calling for the toil of labour of gain from it is allowed to its owner on the basis of rent, and he is not allowed to have a share in the product and the profits accruing from tillage.

Certainly, the owner of the land shares in the profit on the percentage ratio basis, in the share cropping contract (*‘aqdu ’l-Muzāra‘ah*). But we have learnt from the jurist text of ash-Shaykh at-Ṭūsī as per the extract no. 3, that the farming contract is allowed only between two persons one of whom is the agent (farmer) and the other, who gives the land and the seed. So the owner of the land is also the owner of the seed according to the

opinion of ash-Shaykh at-Ṭūsī, as appears from the text given, and his share in the product is not on the basis of the land but on the basis of his ownership of the material and that is, the seed.

2. The Acquisition of Gain Stands Upon the Basis of Expended Labour:

After having set in order the upper-structure and summing up its general phenomena, it is easy for us to reach the doctrinal (normative) side of the theory which binds and unites together that phenomena, and to know the norm which explains the kinds of the acquisition of gain which result from the ownership of the sources of production and justifies permission in respect of both of the two modes and the prohibition of either of the two modes.

The norm, which combines all the legal precepts of the upper-structure on its discovery or its proceedings, is that, the acquisition of gain (*al-kasb*) stands on the basis of labour expended in the course of an undertaking. The expended labour is the only one basic justification by the one who expends it for the acquiring of recompense from the enterpriser who engages the labour on account of it. Without a person's sharing in the expenditure of labour there is no justification for his acquisition of gain.

The norm has its affirmative (positive) sense and purport and its negative sense and purport. On the positive side it lays down that acquisition of gain on the basis of labour is valid and on the negative side, it declares the nullity of the gain which does not stand on the basis of the expenditure of labour on an undertaking.

3. The Affirmative Side of the Sense of the Norm:

The affirmative (positive) side is reflected in the prescriptions regarding hire or renting – quoted extracts nos. 1, 2. These prescriptions permit an employee (a labourer) whose service has been engaged for a particular projected work to receive wage by way of compensation for the labour expended by him on that project.

The prescriptions permit one who owns tools of production to give them to another person to make use of them in the project in consideration for a specified wage which he received from the

undertaker of the project in view of the fact that the tools embody the labour stored in them and this labour, disintegrates in the course of its employment in production operation. For example, the spinning wheel is an embodiment of a specific labour, made from an ordinary piece of wood as a spinning tool. This labour stored in it is expended gradually during the spinning operation so the owner of the spinning tool has a right to acquire the earning of his labour as a result of the depreciation of the labour stored in the tool. So the wage or hire which the owner of the tool of production acquires is a kind of wage or hire which an employee or a hired labourer receives. The acquisition of gain from both of these wages rests upon the expenditure of labour in the course of project with the difference of the nature of the labour. The labour which the labourer expends in the course of the project is labour which is direct and contiguous as to the time of its expenditure. He accomplishes the thing and expends the labour at one and the same time. However, as for the labour which undergoes wear and tear and is expended in the course of the employment of the tool of production is a labour which is disjoined, from the owner of the tool, and the accomplishment and preparation of which had been already completed in order to be made use of and to suffer wear and tear thereafter in the production operations. We there-by learn that the expended labour which the theory regards as the sole basis for the acquiring of gain is not merely the direct labour but includes stored labour also. Hence so long as there is an expenditure and depreciation of labour-work, it is the right of the owner of the expended labour-work to have the compensation agreed upon with the undertaker of a project irrespective of whether the labour-work which the project causes to suffer wear and tear directly or indirectly.

On the basis of this demarcation of the expended labour which included both of the mode of compensation, we can add, to tools of production, a house to which Islam allows its owner to give on rent and acquire, by way of consideration, a gain from others making use of it. Since a house, too, is another thing, storing a previously executed work, undergoing consumption and wear and tear though in the long run, by its use of others, and hence the owner of the house has a right to obtain compensation *vis-à-vis* the work stored in the house which the lessee causes to suffer wear and tear in the course of his utilization of it.

THE THEORY OF POST-PRODUCTION

Likewise, the agricultural land which the land owner gives to a farmer in consideration of rent. The owner of the land receives his right to the land on account of his work of reclaimed the land subjugating its soil and rendering it fit for cultivation. His right to it when the land is exhausted and any trace or affect of his labour therein becomes extinct, as has been stated in the foregoing jurist's texts. Hence the owner of the land is entitled, so long as his labour remains embodied and his endeavours stored in the land, to demand rent from the farmer *vis-à-vis* his utilization of it and enjoying the fruits of it, since the farmer's exploitation of the land causes the depreciation (loss) of a part of the labour which he (the owner of the land) has expended during the course of reclamation and refitting of it for cultivation.

The rent or wage, within the permitted limits of the theory, always stands upon the basis of the consumption of one person's labour by another in the course of the execution of a project and it is paid to the owner of the consumed labour *vis-à-vis* this, there being no distinction between wages for labour or rent for (the use of) tools of production or landed property or agricultural land as regards this basis, even though the nature of the bond which binds the owner of the wage with labour may differ, for whereas the waged labour is a direct labour which the employee puts in by bringing it and consuming of it on account of owner of the project in the course of the production the labour stored in the tools of production, for example, its withdrawal from the labourer and the storing of it in the tool was completed at a prior time and on account of its consumption conducted in the course of the execution of a project of a person other than the labourer. Hence the wage, an employee receives is a wage for the presently put in labour which the labourer himself confirms and consumes; and the rent which the owner of the tool receives is in fact a rent against a previous labour, which the owner of the tool has stored in the tool and which the owner of the project has consumed in the executive operation of his work.

This is the affirmative sense of the norm which explains the gain which results in the ownership of the sources of production, we have learnt that this sense is reflected in all of the fields in which the taking of wage or rent and the acquiring of gain resulting from the ownership of the sources of production.

4. The Negative Side of the Sense of the Norm:

As for the negative sense which abolishes every gain which labour expended in the course of an operation does not justify, it is conspicuously clear from the texts and prescriptions for it is given in the preceding juristic text in the extract 10 (h) that if a person buys a pasture for fifty dirham then it is not lawful for him to sell (give on hire to another person) for a more than fifty unless he does some work on the pasture: that is, digs a well, or cut a canal or performs some labour to improve it with the consent of the owners of the pasture. In such a case there is no objection to selling it (out) for a sum higher than the price he had bought it, because he has done some constructive work in it, and his action makes it proper for him to take the higher price.

This text explicitly establishes its negative sense because it prevents the herdsman to acquire gain resulting from the sale of the pasture or the hiring out of it for a price or rent higher than the price or rent which he paid to the first owners of the pasture without expending labour on the pasture. It does not allow him to earn this gain unless to justify his acquiring of it he labours to dig a well or cut a canal, or do a like work therein.

The text affirms in the book *an-Nihāyah* that if he does some constructive work in the pasture then his doing so gives him a justification of his acquiring the gain. The difference which he acquires it is for the labour which he advances. “Indeed he did some work therein so it is proper for him.”

By this accounting for and linking of acquiring of gain with labour, the text intends to affirm the negative sense of the norm. By labour it becomes proper for the herdsman to acquire the new gain, while without labour it is, not proper. It is obvious that this accounting gives the text the meaning of the norm and it does not remain a mere rule in the case of the herdsman and the pasture but its sense extends so as to make it a basis for acquisition of gain in general.¹

¹ It is like the saying: Do not follow the ‘*fatwā*’ (verdict) of Zayd unless he is *a mujtahid*. If he is *a mujtahid* then it is valid for you to follow his opinion because he is *a mujtahid* so on account of his being *mujtahid* following him (his opinion) is

So acquisition of gain, according to this text is not valid without direct labour or disjoined, stored labour as in the tools of production or landed estate etc.

This fact itself follows from the text B. of Extract I (10) which prohibits a person who takes on rent a land at one thousand dirham, to lease it out at a rent with two thousand dirham, without his expending any labour thereupon and follow the prohibition with the norm which explains it and the general reason on the basis of which the prohibition is established, as the saying because it is guaranteed.¹

According to this accounting for (assigning of reason) and explanation which raises it from its capacity of being an order in respect of a happening to the level of the general norm, it is not permissible for any individual to make secure for him-self a gain without putting in labour, for acquiring it, labour being the main justification in the theory. (Vide Appendix XVI)

Just as the texts which state the negative sense of the norm, they connect it with a number of the prescriptions of the fore-going upper-structure.

Among those prescriptions are those which prohibit a lease of a land or a house or a hirer of tools of production from leasing or hiring with a

valid for you. That the implied sense of this saying by the common law (‘urf) is that the validity of the following a religious opinion is always bound with *ijtihād*, so just as it is not valid to follow the opinion of Zayd unless he happens to be a *mujtahid* so it is not valid to follow any other person’s opinion in such a case or in other words, common law gushes the particularity of an instance of an accounted for order by the accounting for context and makes the linking of earning with labour or following of the opinion with the *ijtihād* a general law.

¹ The text given on the authority of al-Ḥalabī as follows: He says: “I asked the Imām aṣ-Ṣādiq (peace be upon him) ‘Can I enter into a tenancy contract for an agricultural land and hold myself responsible for one third or one-fourth of the yield, then I enter into a tenancy contract with someone else, holding him for one half yield?’ The Imām replied ‘There is no objection’ “. He says he then asked “Can I lease it for one thousand dirhams and then lease it out for two thousand dirhams?” The Imam replied “No”. “I asked him ‘Why?’ He replied ‘In the first case it is guaranteed while in the second it is not’. This is quoted in the foregoing upper-structure.

rent or compensation greater in amount than the amount which it cost him to hire them, if he does not do any work upon them, for, that will make his pocketing the difference without expending on them labour directly or in-directly. For example, a person takes on lease a house at the rent of ten dīnār and lease it (to someone else) at the rent of twenty dīnār, he extracts thereby net gain of ten dīnār without any expended labour, nullification of it is but natural on the basis of the norm we have discovered.

Among the prescriptions which are connected with the norm is also the prohibiting of an employee to employ another employee to do the work he is employed for a compensation less than he is to obtain as stated already in the quoted extract (10). For example, it is not valid for one who is employed to stitch a dress for ten dirham to employ another person to do the work for eight dirham for this leads to the difference of the compensation and to his keeping for himself the two dirham without doing the work. The law of Islam makes that illegal in accordance with the norm in its negative sense, which rejects kinds of earning which are not based on the doing of work. The tailor, whom the owner of the piece of cloth gives the cloth to make into a dress is allowed to employ another person to do the work for eight dirham and keep the two dirham for himself under one and only one circumstance and it is this that he does a part of the work as to the making of the dress and completes a phase of the tailoring work for the accomplishment of which he is hired in order to win the two dirham as a result of the tailoring work expended on the making of the dress.

The third prescription we find in the upper-structure connected with the negative sense of the norm is that which we came across in the quoted extract no. 6, prohibiting the owner of the capital or stock-in-trade (*māl*) in a *muḍārabah* partnership contract holding the agent responsible for the security of his *māl* (capital or stock-in-trade) with the meaning that if a merchant gives his agent, commercial capital, such as cash or commodity to traffic with it on the basis of share in the profits, then he is not legally entitled to charge him with compensation for loss in case it occurs.

The clarification of the meaning of this is that the owner of the capital has before him two modes of dealing with the agent:-

One of the two modes is that he gives to an agent the ownership or

merchandise for sale in return for a specified amount of money which the agent will pay to him after the final disposal of the goods. In such a case the agent becomes a guarantor for the specified amount of compensation agreed upon and holds himself responsible for its payment, along with the fulfilment of all the legal conditions. Irrespective as to whether the commercial transaction results in profit or sustains loss. Under such a circumstance, the owner of the merchandise will neither share the profit with the agent nor will he be entitled to anything except the agreed specified sum of compensation since the merchandise becomes the property of the agent and the whole of the profit reverts to him for he it is who owns the material. It is on account of this that it has come in the tradition as has been in antecedent given in the quoted extract, F (12). He who holds an agent that is the merchant who traffics will be entitled only to his capital (the merchandise or the capital, he gives).

The other mode is that he keeps the ownership of his merchandise and makes use of an agent to traffic with it on the basis of his share in the profit. In this case the owner of the merchandise will be entitled to profit, for the goods is his goods. But it will not be valid for him to impose upon the agent in the contract for paying compensation for making good the loss – and it is this prescription or rule of the law the linking of which, we indicated, with the norm we have presently discovered through the upper-structure – and that is because the loss in business does not mean the agent's consuming or wasting use in the course of the commercial operation in respect of the disjoined labour of the owner of the goods stored in the good as is the case in relation of the owner of a house or of tools of production which makes it valid for him to permit you of the utilization of his tools or occupation of his house and your capacity of the guarantor for whatever you consume or waste in the course of your occupation of his house or the use of his tools of production, since when you utilize the house of some-one else or his tools of production for a period of time you will cause them to suffer some wear and tear and in consequence of it, an instalment of his labour stored in it. So the owner of the house or the tools of production is entitled to demand compensation from you for what you have consumed or wasted by the occupation of the house or the use of the tools. This compensation which the owner of the house or the tools of production, obtains, is based upon expended labour. But when you receive from the owner of the capital or

property a sum of one hundred dīnār to traffic with it on the basis of your partnership in the profit, you buy one hundred pens with the money and for reason of a fall of price in the open market or deprivation of the value of pen or any whatsoever reason, if you are compelled to sell the pen for ninety dīnār you will not be held responsible for this loss and will not be obliged to pay compensation against the wares in proportion to the extent they have suffered wastage since the wastage of the merchandise was not the result of your wastage of any thing of it or the labour stored therein, but was the result of the fall of the exchange value of the pen or a decline of their market rates. So here the question is not a question of a person's stored labour which you have consumed and expended in the course of your utilization of it so as to make it necessary for you to compensate him on account of it. On the contrary the labour stored in the merchandise does not cease to remain intact as it was, unfettered, unconsumed; only its price has suffered a decrease or its rate is lowered. So it is not for the owner of the merchandise to get compensation from you on that score, since if he obtains from you anything like that then such an earning of his would constitute an earning gains without putting expended labour and leads to his obtaining a gain from you without your having consumed anything of his labour through utilization. This is what is rejected by the negative sense of the norm.

5. The Binding of the Interdiction of Usury with the Negative Side of the Sense of the Norm:

Just as the interdiction of imposing guarantee is bound with the negative side of the sense which we have been studying, so likewise, we can also regard the interdiction of the usury for one of the structures of the upper-structure which reclines upon on this negative sense of the norm. The interdiction of usury is rather one of the most weighty part of that structure. We have come across the order interdicting usury in the quoted extract 9 of the foregoing upper-structure, which explains Islam's prohibition (*taḥrīm*) of all kinds of borrowing at gain. Interest is considered in the established capitalist usage, which permits it as a wage (return) of cash capital which the capitalists advance to commercial projects, etc. against a recompense at a percentage ratio per annum for the advanced money. To this recompense the name of interest is applied.

It does not differ much from the recompense which the owners of the landed properties or tools of production accruing from the hiring of those landed properties or tools of production. Just as you can lease a house to dwell in for a period of time, and then hand it over to its owner along with the specified rent so likewise it is permitted to by the common law (*'urf*) which believes in interest to borrow an amount of money for consumptive or commercial purpose and then hand over the amount itself or a like amount along with the specified wage (recompense) to the person from whom you borrow the money.

Islam by its prohibition of borrowing money at interest and by its permission of gain or profit accruing from hiring out of landed properties and tools of production reveals the theoretical difference between cash capital and the landed properties and the tools of production. This difference should be explained in the light of the theory and on the basis of the norm the discovery of which we are now pursuing in order to know the reason or ground which calls upon the economic doctrine to put an end to the wage (return) of the capital or in other words, abolishment of the guaranteed gain accruing from the ownership of cash money while it allows the wage of the tools of production and approves a guaranteed gain accruing from the ownership of these tools. Why it permits for the owner of the tool to reap from them and by way of hiring out of them a guaranteed gain without undergoing the trouble or hardship (of labour) while it does not permit the capitalist to reap from his cash and by way of the lending of it, a guaranteed gain without undergoing the trouble (of labour). This is a question, we have indeed to answer without fail and decidedly.

Indeed the reply to this depends upon no more than a recourse to the norm in the form in which have discovered it and its two senses positive and negative. The guaranteed earning or profit – the rent or wage accruing from the ownership of the tools of production is implied by its affirmative or positive sense of the norm. The stored labour in the tools of production constitute a right of the hired to a part payment for the wear and tear they suffer from conducting the operation of production. The wage or hire which is paid to the owner of the tool is, in fact a wage or hire in respect of previous labour and consequently represents a gain or earning on the basis of expended labour. Hence it is permissible according to the positive sense of the norm. As for the guaranteed gain

accruing from cash capital – the interest – there is nothing which justifies it theoretically. The merchant who borrows a sum of one thousand dīnār for a commercial project at a specified rate of interest will hand over to the creditor within a specified time, the sum of one thousand dīnār without an atom of loss occurring to them from wear and tear by their use. In such a circumstance the interest will become an illicit gain since it is not based upon any expended labour so as to be implied or come under the class of the negative – sense of the norm.

Thus we learn that the difference between interest on the cash capital and the wage or hire on the hiring of the tools of production in the Islamic Law arises from the difference of the nature of the utilization of the advanced cash-capital and nature of the utilization of the hired tools of production. The borrower of the cash capital's utilization does not lead to any depreciation of the capital on account of its nature or the wastage of any part of the labour stored therein for the borrower is responsible by the law of loan-contract for the handing over, within the limit of the specified period of time, the amount and the cash which he hands over in the discharge of the debt is the cash without any difference as to its potency.

As for the lessee's utilization of the tools of production which he hires, in the course of the productive operation, for example, the utilization will lead to their suffering depreciation to a certain degree and the wastage of a part of the labour embodied in them. On account of this it is but meet that the owner of the tools of production obtain some gain by way of hiring out of the tools on the ground of the expended labour. But it is not meet for the capitalist to obtain any gain by way of this because he recovers his property as it was, intact and without suffering any wear and tear by use.

We can add to the collection of the prescriptions which we have presented for the revealing of the bond between the upper-structure and the theory, another prescription, already advanced in the quoted extract (6). It is a prescription which decrees the disallowing of an agent in a *muḍārabah* contract to enter into an agreement with another agent to carry out the work in consideration for a less percentage ratio of profit than the consideration the first agent obtains. Obviously, prohibiting this practice is wholly in agreement with the negative sense of the norm, the revelation of which we have been pursuing. It is the denying of a gain

which is not based on expended labour for when the first agent when he will perform the above-mentioned work, he will keep for himself the difference between the two percentage ratios. This gain will be a gain acquired without expended labour. So it is but natural that such a gain may be put an end to in conformity with the general norm.

6. Why Means of Production do not Share in the Profit ?

Now there remains, from the foregoing upper-structure, one last question about the prescriptions as to the sharing of profit. Let us prepare our self for the question by an optimization of the data we have found uptil now. We have learnt from the Islamic theory of post-production distribution that acquisition of gain is valid only on the basis of consumed labour. Consumed labour is of two kinds; labour put in and consumed at the same time like the labour of the hired man; and the labour, disjoined and stored, put in previously and consumed during its utilization, by the hirer of it, like the labour stored in the house or the tools of production which is consumed and suffers wear and tear in the course of the dwelling therein or its utilizations. We also have learnt that the ownership of cash capital does not constitute a source of gain. It is because, lending, as interest is not based on labour consumed, is forbidden. It has enabled us to bring together all kinds of fixed wages, some of them are permitted like the hiring of a house and some of them are forbidden like the gain of interest and to apply successfully the norm into positive and negative senses. But we have, uptil now, said nothing in explanation of kinds of gain other than the fixed compensation mentioned in the foregoing upper-structure and by this we mean the sharing in the profit, and the linking of the fate of it. It is the outcome of the operations as to gain and loss. The working partner in the working partnership (*'aqdu 'l-muḍārabah*) cannot demand under all circumstances, a fixed return from the person who invests the money. We can demand only a share in the profit and his gain contracts or expends in accordance with the outcome of the operation. So, always the working partner in the farming contract and watering of the garden contract. In such contracts too, gain is permitted on the basis of profits or produce as stated in the foregoing extracts (3, 6, 8). On account of this we stated at the very commencement of our discussion that two kinds of gain for the

labour are permitted, one, wage or return and the other share in the profit.

Likewise also the owner of the stock in trade in the working partnership contract and the owner of the land in the farming contract and owner of the trees and garden in the garden watering contract are allowed gain on the basis of profit. Every one of them has a share in the profit according to terms agreed to in these contracts stated in the foregoing extracts pointed by us previously.

In comparison to this, the tools of production are forbidden to have a share in the profit and the *sharī'ah* does not permit for them gain on that basis, rather it permits an opportunity to acquire for them gain on the basis of fixed return. The man who owns tools of production cannot give them to one who works with them on the basis of a share in the profit or the produce as is already stated in the extract (10) of the foregoing upper-structure in which it occurs that it is not valid for him who owns a net or trap for catching game or any other tool to give it to the game catcher on the basis of having a share of the game bagged, for if the game catcher bags the game with the help of it, whatever of the game he bags will be his in toto and Mt owner of the net or the trap will get no share thereof.

These things are quite obvious from the upper-structure, and it is upto us to posit the following question for the sake of discussion.

Why is it that the labour is allowed to acquire gain on the basis of sharing in the profit, while gain on the basis of sharing in the profit is not allowed to tools of production? And how it is that while the tools of production are forbidden acquisition of this kind of gain, it is possible for the owner of the stock in trade (merchandise) or the owner of the land and the owner of the garden or plantation of trees to acquire it.

In fact, the difference between labour and the tools of production, a difference which allows labour to share the profit but does not allow the tools of production to share it, arises from the theory of pre-production distribution. We have learnt from that theory that labour – the pursuit of works of utilization and fructification – is the general reason and ground for the private rights in respect of the raw natural wealths and there does not exist from the point of the doctrinal economics any another reason or ground for the ownership and the acquiring of private right to them. Likewise also, we have learnt that if an individual acquires a private right by carrying out labour on them his right continues to remain fixed and as long as the nature of labour, on the

basis of which he acquired the right lasts and under this circumstance it is not permissible for another person to acquire a private right in those wealths by expending fresh labour on them as has been expounded in detail by the theory of the pre-production distribution. But this does not mean that the new labour differs in nature from the first labour rather it is that each one of them will constitute singly by itself a ground for giving ownership of the material who has done in respect he has laboured for. The new labour is denuded of its effect only in consideration of the first labour having preceded it in time and on account of the operation of its effect giving owner-ship of the material to the first agent. So it is the first agent on the ground of his having been before the second worker in time which insulates the effect of the labour of the second agent. On account of this it becomes natural that when the first agent forgoes his right, the second labour may come back to take its effect. And this is what altogether takes place in respect of the contracts of *Muzāra'ah*, *musāqāt*, *muḍārabah* and *ju'ālah*, for example in the *'aqdu 'l-Muzāra'ah* (farming contract) the labour exerts and carries out labour for the fructification of the seed and the transformation of it to crop. However, this labour which he carries out does not give him the right to the ownership of the crop for the material about which he carries out the – labour the seed is the property of a previous person, the owner of the land. If the owner of the land allows the agent – the cultivator – by the farming contract to reap the fruit of his labour and forgo his right to the half of the material, for example, then there remains nothing to stand in the way of the agent (the cultivator) to the helping of himself to the ownership of the half of the crop.

On the basis of this we learn that the share of the agent in the produce, in fact, expresses the opportunity of labour which he carries out in respect of a material – for example, the seed, the trees, merchandise and the right which results from its performance, in accordance with the general theory of pre-production distribution. This opportunity or right, however is at times, suspended because of a turn or/a right prior in time which another person enjoys. If this person forgoes his right by a contract, like the contract of farming, or other contracts between the worker and the owner of the property, there remains nothing which prevents from giving the agent his right in respect of the material and within limits of the foregoing of its previous owner as a result of the

performance of labour in respect of it.

As for the tools of production they basically differ from the labour which the agent performs in accordance of these contracts. The farmer who binds himself with the owner of the land and seed by a deed of farming contract carries out labour and does painstaking work, it is his right that he may own it within the limits of the terms allowed in the contract. But as for the owner of the net or trap for catching game, who gives it to a catcher of the game to catch game with it, he does not carry out the labour of bagging the game nor makes effort for acquiring possession of it. But it is only the catcher of the game alone who carries out the labour and takes the exertion to catch the game. So there does not exist any justification for the owner of the tool of hunting to acquire a right to the ownership of the game. Since performance of labour in the catching of the game is the justification for that and as the owner of the hunting tool has not performed the labour of trapping the game to acquire this right and the game catcher's giving him permission to this right does not suffice for granting of it to him so long as it is not applicable in the general theory of distribution. So here it is not the right of the game-catcher which comes in the way to the trap-owner's ownership of the bagged game but what comes in the way of it is of the theoretical justification.

In this way we learn from this point the difference between direct labour and stored labour. Direct labour is a labour which is performed by the agent on the material. This constitutes a justification of his right of the ownership to something of it, when the previous owner of it (the material) forgoes his previous right. As for the stored labour, in the tools of production, he puts in no direct labour in the operation, for example, the owner of the trap or net. He does not perform direct labour in catching the game, so he has no right to the ownership of the material, irrespective as to whether or not the performer of the labour – for example, the catcher of the game, forgoes his ownership to it. He only is entitled to hire, that is, compensation or return in consideration of the consumption or depreciation which his stored labour suffers during its use in the operation.

In the light of it, we are able also to perceive the difference between the owner of the tools of production who is permitted to have a share in the profit and the owner of the land in the farming contract and the

owner of the commercial goods in the *muḍārabah* contract and similar things in case of which sharing in profit is permitted. Those owners who are permitted to have a share in the profit or produce, in fact, own the material on which the agent performs labour. For example, the landlord owns the seed (according to a foregoing text by ash-Shaykh aṭ-Ṭūsī) which the farmer sows, and the owner of the commercial goods (merchandise) owns the commodities with which the agent traffics, now we know from the theory of pre-production distribution that the ownership of a material does not lapse by the transformation of that material on the part of another man and his conferring upon it a new utility, so it is but natural that it becomes the right of the owner of the seed or the merchandise to the produce or profit accruing therefrom so long as he owns the material in respect of which the agent carries out the work.

The circumstances wherein the owner is allowed the appropriation of the profit or produce such as *Muzāra'ah*, *musāqāt*, *muḍārabah*, etc. support and consolidate the correctness of the explanation we have offered for this ownership, because all of these circumstances share in one thing and it is this that the material on which the agent carries out work is already a property of its owner.

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OBSERVATIONS

1. THE ROLE OF RISK IN THE ISLAMIC ECONOMICS

The findings we have come across from the theory of the post-production distribution plainly state. that the theory does not admit risk as one of the factors for acquiring gain and that there is no kind of gain which receives its justification from the risk.

In fact, risk is neither commodity which the venturer offers to someone else so that he may ask the price of it nor is it a labour which the venturer expends upon a material so that it may be his right to its appropriation or demanding of a wage or compensation on that from its owner. It is only a specific mental state which prevails upon a man who is trying to venture upon a thing the issue of which he is afraid, so that, he in consonance with his fear, may either withdraw from the venture some undertaking or he may master his impulse to fear and join it to his determination upon it. Hence it will be solely he who will lay down for himself the course and choose fully by his will to bear the burden of the difficulties of fear to venture upon the planned undertaking about which there is a probability of loss. So it is not upto him that he demand a material compensation in respect of this fear as long as it is a personal inner feeling and neither physically embodied labour nor a produced commodity.

Truly, sometimes mastery over (conquest of) fear is of great importance psychologically and morally. But a moral valuation is one thing and economic valuation another thing.

Many have fallen into error influenced by the capitalist thought which has a tendency to explain the point and its defence on the basis of risk. They say or have said that the profit allowed to the owner of the stock-in-trade (cash capital or commodity) in the *muḍārabah* contract is theoretically based on the risk because even though the owner of the stock-in-trade does not do any work, yet he bears the burden of the risk and exposes himself to loss by handing over his cash or commodity to the agent trafficking with it, so it is a duty of the agent to make proportionate percentage of compensation against the ventured risk, out of the profit agreed upon in the *muḍārabah* contract between them.

But the fact has been made fully clear in the previous discussion that the profit which the owner of the cash or commodity obtains as a result of the agents trafficking of it is not based on the risk but receives its justification on the basis of the proprietorship of the owner of the cash or the commodity with which the agent traffics. The commodity, even if it is most likely that its value may increase by a commercial labour which the agent expends on it, such as his labour of transferring to the market and making it readily available to the consumers of it, yet continues to remain the property of the owner of the cash because no commodity secedes or is removed from the owner-ship of its owner by another persons changing it. This is to which we apply the name of the evidence of the constancy of owner-ship.

So the right of the owner of the cash or commodity to the profit is the result of the ownership of the material which the agent handles profitably by way of its sale. It is similar to the right of the owner of a plank of wood out of which the bed stead is manufactured.

On account of this profit is considered the right of the owner of the cash or commodity even if he does not carry out any kind of psychological venturesomeness. For example, a man traffics with the property of another man without his knowledge and makes profit from his trade. In such a case the owner of the property (cash or commodity) can acquiesce in that and appropriate to himself the profit so also it is his right to object to it and seek to obtain his property or what is equivalent to it from the agent.

The hold of the owner on the profits, in this example, is not based on

the element of risk, for in any case, his property is guaranteed; and the agent – the trafficker – took the risk of the guaranteed property and compensate in the case of loss.

This means that the right of the owner of a property (cash) is not theoretically the result of risk he runs nor a compensation against it or a reimbursement to the owner of the property for his resistance of his fear of the dangers as we read is the wont of the writers of traditional capitalism. These writers attribute to risk-taking the mark of heroism and make it a justificatory ground for the obtaining of the gain on the plane of this heroism.

There are a number of things in the *sharī'ah* which go to prove its negative stand-point as to the risk and in admission of its positive role as the justification of the acquiring of the gain.

For example, there are many who are wont to explain and justify usurious interest on the element of risk of which borrowing consists. We will take it up in our following observation. A person's giving his money on credit is a sort of risk in which he may lose his money, if the borrower is unable in future to pay him back the money lent or meets with a disaster so that the creditor succeeds in getting nothing. As such it is his right that he obtain a recompense for against his adventure with money for the sake of the debtor and this recompense is interest.

Islam does not admit this kind of thinking and does not find in the assumed risk justification for the interest which the owner of the money obtains from the debtor. There it has forbidden it decisively.

The forbidding of gambling and the earning based on it is another legal aspects of *sharī'ah* which demonstrates its negative stand-point as regards the element of risk-taking, since the earning resulting from gambling is not based upon productive labours but rests upon the risk alone. The bettor obtains his wage because he has taken the risk with his money and advances to pay over the wage to his adversary in case the client suffers the loss.

We may join to the abolition of the gambling and the abolition of the *shirkatu 'l-abdān* (body pooling partnership) also according to many text of jurists like al-Muḥaqqiq al-Ḥillī in *ash-Sharā'i*, and Ibn Ḥazm in *al-Muhallā* these things are forbidden.

By this partnership they mean, a partnership between two or more persons each of the two or everyone of them pursuing his particular work

and craft and sharing jointly the earning accruing therefrom. Like two physicians agreed between them that each one of them will perform the work of visiting sick persons and share each one of them half of the fees they may have jointly earned during the month.

The abolition of this sort of partnership agrees with the negative standpoint of the *sharī'ah* from the element of "risk", for the earning is based on risk and not on work. The two physicians in the above example, engage themselves in this kind of partnership, only because they do not know before hand the amount of fee they will acquire from their work. Each one of them thinks that the fees earned by his partner may be more than what he earns and vice versa. So he engages in such a partnership, making up his mind to forego a part of the amount of the fee he earns in case it is more than his partner and may acquire from that earning of his partner, in case the fee he (partner) earns is more than what he earns. As a result of that the physician of lesser earning will have a right to join in acquiring part of the earning of the other physicians and the fruits of his labour for he had taken the risk in respect of his earning from the very beginning, if the result was different. This means that the joining in the earning by the physician of lesser income thus arises from an element of risk and is not based on expended labour. So the abolition of it by the *sharī'ah* and its order of its nullification confirms its negative sense in respect of risk.

2. CAPITALIST JUSTIFICATION OF INTEREST AND ITS CRITICISM

We have learnt a short while ago that the element to risk in the loan about which Islam adopts a negative position is one of the justification with which capitalism supports its explanation of interest and the right of the capitalist to impose it on the debtor.

We have also learnt that justification of charging interest on the ground of the element of risk is wrong on the basis of Islamic view, because Islam does not consider element of risk a lawful ground of earning but Islam connects gain only with direct or stored labour.

Capitalism in its justification of interest on the basis of this element of risk, in loaning the money forgets the role of mortgages which is the creditor's obtaining of guarantee and the elimination of the element of

the risk, plays in the loaning operation; What then is its (capitalist) view about loans propped up with mortgage and sufficient guarantees?

The capitalist thinkers have not only confined themselves on trying interest with element of risk and explaining it in this light but also have advanced a number of explanations for its justification on the basis of the doctrinal side.

Some of the capitalist thinkers have said that the interest which a debtor pays to the capitalist is a compensation which he pays to the money lender for his deprivation of the profitable use of the money advanced and remuneration for awaiting the whole duration of the agreed period ; or it is a charge which the capitalist demands in consideration of the borrower's utilization of his money lent to him, like the rent which a landlord gets from a tenant *vis-à-vis* his residential utilization.

We perceive in the light of Islamic theory of distribution, as delimited by us the contradiction between this attempt and the Islamic mode of thinking in respect of distribution. Islam, as we have learnt, does not acknowledge earning or gain under the name of honorarium or compensation on the basis of the expenditure of direct or stored labour. And the capitalist does not spend neither direct nor stored labour which the borrower sucks up, so that he must pay the compensation; as long as the loan shall return back to the capitalist without depriving or wasting.

Hence there is no Islamic justification for the acknowledgement of interest, since earning without labour is contrary to Islamic ideas of justice.

There are some who justify the interest as an interpretation of the capital's right to some of the profits which the borrower reaps by way of the money he advanced to him.

But this interpretation has no place in the loans which the borrower spends to meet his personal needs and on account of that fact he does not make any profit from it. It only justifies the validity of capitalists acquiring something from the profit at the time of his advancing money to one who trades with it and earns fruitful profit therefrom. In such a case Islam admits the right of the capitalist to the profit in that respect. But this right means the partnership of the money-owner with the worker in the profit and allocation of the capitalist's rights with the results of the operation. This in Islam is the meaning of *muḍārabah* wherein the capitalist alone bears loss, and shares the profit with the worker on the

basis of percentage agreed upon the partnership contract.

This substantially differs from profit in the capitalist sense which guarantees a fixed return apart from the outcome of the trading operation.

Capitalism brings forth stronger justification for interest at the hand of some of its supporters as it is explained as an interpretation of the differential between the actual value of the commodity and the future value of it. It is based on the belief that the time plays a positive role in the formulation of value. The exchange value of dīnār of today is greater than the exchange value of the dīnār of tomorrow. So if you lend a dīnār to someone for one year, it is your right that at the end of the year to obtain more than a dīnār, so that you may recover thereby a sum which is equal to the exchange value of the dīnār you had lent to him. Whenever the period of payment is longer, the money lender will become entitled to increase interest in accordance with the difference between the present value of the dīnār and its future value, due to the extension of the time distance between it and its prolongation.

The notion behind this capitalist justification rests on a wrong basis. It is the allocation of the distribution of post-production with the theory of value. The theory of distribution of post-production is apart from the theory of value itself. That is why we see that many a factor which has a post in the formulation of exchange value of the produced commodity has no share of that commodity in the Islamic distribution. But it has for its part fares which can obtain from the owner of commodity equal to its service to him in the operation of production.

The distribution among individuals does not rest in Islam upon the basis of exchange value so that to give every element of production a share in product equal to its role in the formation of the exchange value. In Islam the distribution of the produced wealth is connected with Islam's doctrinal concepts and its ideas about justice.

So from Islamic point of view it is not necessary to pay interest to the capitalist on the loan, even if it is true that actual commodity's value is greater than its future value, because this is doctrinally not sufficient for the justification of usurious interest which expresses the differential between the two values unless interest is reconcilable with the ideas which the doctrine adopts in respect of justice.

We have previously learnt that Islam does not admit from the doctrinal side an earning which is not justified by direct or stored labour

spent in. The interest is of this kind, because it is, according to the last capitalist explanation the result of a time factor only and not a result of the work. So it is rightful for the doctrine to forbid the capitalist to utilize time for obtaining a usurious earning even though the doctrine acknowledge the time factor's positive role in the formulation of value.

Thus we know the error of the linkage of the justice of distribution with the theory of value; and this error indicates of the absence of distinction between the doctrinal enquiry and scientific investigation.

3.LIMITATION OF THE AUTHORITY OF THE OWNER OVER THE USE OF HIS PROPERTY

There are a number of limitations on the owner of a property to the free disposal of it. The sources from which these limitation arise are different, some of them have their sources in the theory of pre-production distribution, for instance the time limitation of the authority of the. owner over his property up to the span of his life and the interdiction on his authority to decide the fate of the wealth he owns after the cessation of his life as above mentioned discussions.

Some of the limitations are the outcome of the theory of post production distribution. For instance, the limitation of the authority of the capitalist over the capital which he owns, interdict him from earning, on the basis of usury and impermissibility of his lending it at interest. This limitation has arisen as a result of the theory of post-production distribution which consists of the connection of earning by labour spent – direct or stored as we have learnt a little while ago.

Then there are limitations in the Islamic economic system connected with religious and moral conceptions about private property as a result of the individual's membership of the society for the benefit and service of which Allāh has provided the natural wealth. Being so it is not valid to demolish, private property on that basis not to become a factor for injuring the society and the worsening of its condition because by its doing that it ceases to be a manifestation of the benefit of society for the benefit of which the natural wealth are provided. So it is natural, on this basis, to limit an owner's authority over the free use of his property in a way which may cause injury to others and be detrimental to the interest of the society.

Contrary to this is the right of ownership on capitalist basis. Capitalism does not look upon the individual's right to his private property of the natural wealth as a phenomenon of benefit to society but the right of the individual is interpreted as capitalistically as the greatest share of freedom in every field. It is natural therefore that it may not limit it except by other person's freedom, so, in capitalist system an individual has the right to utilize his property in any way he likes so long as he does not deprive others of their formal freedom.¹

For example if you possess a great project, then it is within your right on the basis of capitalist conception about private property to follow any of the methods which may enable you to wipe out small projects and to drive them out of the bounds of market in a form which may lead to its destruction and injury to its owners, for, this does not interfere with their formal freedom of which capitalism is jealously keen to abound to all.²

¹ For the clarification of the meaning of formal freedom and real freedom, see vol.1, pt.2, p.54 (Engl. transl.).

² The owner's disposal of his property which leads to harming of others are in two ways:-

One way of it is the owner's usufruct of his property which causes direct loss of property or injury to another person by diminution of his properties, such as if you dig a pit on a land belonging to you which may lead to the falling down of the neighbouring house belonging to someone else.

Another way of causing injury to other is indirect form of it which leads to the worsening of the condition of the others, without actually decreasing anything from their properties, like the methods which great capitalist projects follow in destroying small projects. These methods do not actually deprive the owner of the small project of any of his commodities he possesses. It only compels him to dispose it at a cheaper price and to the withdrawal from the field and disables him from continuing his business.

As for the first kind of the use of one's property is included in the general Islamic law *lā ḍarar walā ḍirār* (neither harm nor be the cause of harm). The owner of property is forbidden conformably to this law to practice this sort of the use of his property.

As for the inclusion of the second kind of the use of one's property in that general principle, it is connected with the determination of the sense of the term '*ḍarar*' (harm). If *ḍarar* means direct diminution of the property or life, as many jurists think, then this sort of harm does not come under this principle; for it is not causing harm in this sense. But if causing harm means causing the

It has come in a collection of traditions and reports (*aḥādīth* and *riwāyāt*) on the legislative principle which Islamically limits the disposal of the owner of a property to use his property in such a way as to cause harm to others, as mentioned herebelow:-

1. It is stated in a number of reports that Samurah ibn Jun-dab owned a cluster (of dates). His way to it lay across the interior of a premise of an *anṣārī* man. Samurah used to come and enter to his raceme without asking permission from the *anṣārī* man. The *anṣārī* man told him: "Samurah, you always come upon us suddenly while we are in a state we would not like your coming upon us unannounced. So when you come, ask permission." Samurah replied: "I will not ask permission to a way which is my way to my cluster." The *anṣārī* man then complained to the Messenger of Allāh (*s.a.w.a.*) against him. Thereupon, the Messenger of Allāh (*s.a.w.a.*) sent for him and when Samurah came, told him: "So-and-so complains against you. His allegation is that you enter his premise without asking his permission, and you come upon him and his family unannounced. So henceforth whenever you wish to enter, ask his permission." In reply, Samurah said: "O Messenger of Allāh! Do I have to ask permission for my way to my cluster?" The Messenger of Allāh then said to him: "Well, then leave it, we will give you, instead of it, a raceme at such and such a place". He said: "No." The Messenger of Allāh (*s.a.w.a.*) then told him: "You are a harmful person. (It is not permitted) to harm a believer nor to cause inconvenience to him or injury (*lā ḍarar walā ḍirār*).” The Messenger of Allāh, then, ordered to uproot the raceme and fling it at him.

2. On the authority of al-Imām aṣ-Ṣādiq (a.s.) that the Messenger of Allāh (*s.a.w.a.*) passed for the Medinites a decree concerning troughs for date-palms, that the use of extra water should not be prohibited. He

worsening of the person's condition as is given in the lexicons, then this is a wider and more comprehensive meaning of the term than direct financial harm, then in that case it is possible to include this second kind of harm on the basis of this sense and the declaration of the limitation of the authority of the owner of the property to his property and forbidding him to practise either of the foregoing both injurious uses of his property because both of them lead to the worsening of the condition of other people and the turning back of worsening condition to detraction also as explained by us in our discussion on principles, and lead us to the generalizing of the law of it.

(the Messenger) passed a decree to the nomads that the surplus water should not be prohibited, so that the surplus pasture not be prohibited. And he (the Messenger) said: (It is not permitted) to harm others nor to cause inconvenience to them (*lā ḍarar walā ḍirār*).

3. Also on the authority of al-Imām aṣ-Ṣādiq (a.s.), that he was asked about ordering a person to rebuild a wall which had fallen down, which used to act as a curtain between him and his neighbour's premise. He (the Imām) replied: "The owner of the fallen wall cannot be compelled to rebuild it unless it becomes incumbent upon him to do so, on account of the right of the owner of the other premise or on a conditional term agreed upon in the original contract of the property. But it may be told to the owner of the house, 'You can buy for yourself your right if you wish' ". He (the Imām) again was asked: "If the wall had not fallen by itself, but the owner razed it down or he razed it down – without any need (reason) – in order to harm his neighbour?" He (the Imām) replied: "(In that case) he should not be let free since the Messenger of Allāh said: 'Neither damage nor harm (*lā ḍarar walā ḍirār*)'. So if he razed it down, he must be compelled to rebuild it".

4. In *Musnad* of Aḥmad ibn Ḥanbal there is a tradition narrated by 'Ubādah that the Messenger of Allāh (s.a.w.a.) decreed: "Neither harm nor damage", and he decreed: "For the wrong doer that he has no right on the crops he raises on a forcibly seized land:" and he also decreed to the Medinites on date palms that the extra water from well should not be prohibited; and decreed to the nomads that no surplus water should be prevented in order to prevent extra pasture.

* * * * *

CHAPTER TWO

THE THEORY OF PRODUCTION

RELATION OF DOCTRINE WITH PRODUCTION

There are two aspects of the activity of production.

One of them is objective. It consists of the means which are employed, the nature which is implemented and the labour which is expended in carrying out of the operation of production.

The other is subjective. It consists of the psychological motive, the goal which is aimed to be achieved by the operation and the evaluation of the operation in accordance with the adopted conceptions of justice.

The objective side of the operation is subject matter which the science of economic studies singly by itself or in conjunction with physical sciences. In order to discover general laws which control the means and the nature as to make it possible for man the power over the use of those laws after their discovery and organizing of the objective side of the operation of production in a better and more successful manner.

For example, the science of economics discovers the law of diminishing return in agriculture. The law states that the increase of the additional units of labour and capital in a definite proportion is met with the increase in the productions in less proportion. This disparity between the proportionate increase in the units of labour and capital and the proportionate increase of the products continues and consequently the increase in the return continues in diminishing till the increase of the return becomes equiponderant with the proportionate increase of the units of labour and capital. When this state of affair is reached it would not be to the interest of the farmer thereupon to spend again any more labour and capital over the land.

This law throws light on the operation and by its discovery a producer can avoid wasting of labour and capital and can specify the factors of production which would guarantee him the great amount of result.

Like this law is the fact which says that the division of labour leads to the betterment of production and its abundance. It indeed is an objective truth, rightfully discovered by the science and placed at the disposal of producers to take advantage of it to the improvement and the increase of production. The duty, therefore, of the science of economics which renders to the production, is to reveal those laws which enable, through their acquaintance, the producer to organize the objective aspect of the operation of production in a form which leads to a good result and to an abundant and better production.

In this field the doctrine of economics, whatever its nature may be, has none whatsoever of positive role to play because the revelation of the general laws and the objective relations among the natural or social phenomena is the function of the science and does not enter freely into the competency of the doctrine. It is on account of this that different societies with their economical doctrines meet together on the scientific ground and agree upon the making use of the contributions of the science of economic and all the other sciences and to seek guidance from them in the fields of productions.

However, the doctrine has a positive role to play on the subjective side of the process of production. In this side is reflected doctrinal contradiction between societies which differ from each other in their economical doctrines, for every society has its own special view point as to the process of production and evaluates that process on the basis of its general conceptions and its doctrinal methods as to the determination of the motives and contributions of the ideals of life.

For what we produce? And to what extent? What are the objectives should be aimed at from the process of production? What kind of the commodity to be produced? And is there a central authority which supervises over the production and its planning? These are the questions which the doctrine answers.

* * * * *

GROWTH OF PRODUCTION

There could be the only point about which there is a complete agreement among the doctrines of Islamic, capitalist and Marxist systems of economy; all on the doctrinal ground. That point is the growth of production and the utilization of nature to the utmost limit of its advantage, within the general framework of the doctrine.

All of these doctrines of economic system are unanimous about the importance of this objective and the achieving of the realization of it by all the manners and modes which are consonant with the general cast and framework of their respective doctrines. Likewise, as a result of a single system of the economic doctrine's organic coordination, it rejects everything which is not compatible with its doctrinal framework. Since the principle of growth of production and the utilization of nature to the utmost limit of its advantage is a part of a whole, it reacts in every doctrine upon the rest of its parts and assumes the conformity in accordance to its position in the composite and its connections with all the parts. For example, capitalism rejects any method of the growth of production and increase of wealth which clashes with its principle of economic freedom; and Islam rejects all of those manners which do not agree with its theories about distribution and its ideal of justice. However, Marxism believes that the doctrine does not clash with the growth of production but runs on the same line with it, according to its view as to there being an inevitable coordination in relation between production and the form of distribution as it will be discussed later.

Anyway, we will set out on the study of the Islamic theory of production from the principle of the growth of production in which Islam believes. Islam has enjoined upon Islamic society to form its conduct conformably to it and has made the increase of wealth and the exploitation of nature to its utmost possible limits doctrinally a target of the society. It lays down its economic policy in the light of it to be determining on one side by the general doctrinal frame and by the objective conditions and circumstances of the society on the other. The state executes the policy within those limits.

We can see clearly the features of the principle of the growth of production from the application of it during the times of the Islamic State and from the formal Islamic instructions which history has preserved even to this day. From these instructions in the programme which the Commander of the believers, ‘Alī (a.s.) had formulated to his Governor of Egypt, Muḥammad ibn Abī Bakr and had ordered him to follow it and to apply the instructions. It is reported in *al-Amālī* of ash-Shaykh aṭ-Tuṣī that when the Commander of the believers appointed Muḥammad ibn Abī Bakr as the Governor of Egypt, he wrote to him and commanded him to read the letter to the people of Egypt and to act upon whatever contained therein. The Imām wrote in this letter:-

O servants of Allāh! Verily, the pious acquired possession of the goodly transient things of the world and the goodly things of the future life. They shared with the worldly people, their worldly life, but the worldly people did not share with them their life hereafter, Allāh has permitted them to have such of the worldly things as would be adequate for them and suffice them (as to their worldly needs). Allāh the Mighty and the Glorious said: *Say: "Who has forbidden the beautiful (gifts) of Allāh which He has produced for His servants and the pure and clean things (ṭayyibāt) He has provided for sustenance?" Say: "They are in the life of this world for those who believe (and) purely for them on the Day of Judgment. Thus, do we explain the signs in detail for those who understand"* (Qur’ān, 7:32). They live in the world in the best way the world lives, ate the best things that the world eats. They share with the worldly people their world. They eat with them out of what they eat of the pure and the clean things and drink with them out of what they drink the pure and clean, and clothe themselves with the best of the dress with which

they clothe themselves, and dwell in the best of the houses in which they dwell and ride the best of mounts they ride. While they enjoy the worldly pleasures with worldly people, tomorrow they will be the protégès of Allāh; and desiring of Him His gifts, they will be given what they desire; and their prayer will not be reflected and no-thing will be detracted from their share of pleasure. So Oh servants of Allāh towards such things, he who has sense will be eager for and labour for it with piety of Allāh. There is no power or might save in Allāh.

This admirable letter is not of the god-fearing people's actual existence on the face of the earth or their actual historical existence, but had for its aim the perfection of the explanation of the god-fearing people's world-view (theory) about life and putting up of a pattern which a god-fearing society should make true on this earth. It was because of this that he ordered to adopt to practice what was in the letter and formulate his policy in the light of the commandments and instructions given therein. The letter then is quite clear as to the material prosperity which increases in production and the maximum productive exploitation of nature realizes is a target to achieve which the god-fearing society will strive and which the theory which this society adopts imposes upon it and in the light of it acts upon it in the life.

The target at the same time is covered in the religious frame and confined to limits as the Holy Qur'ān declares:

O You who believe! Make not unlawful the good things which Allāh has made lawful for you, but commit no excess, for Allāh loves not those given to excess (5:87).

So prohibition as to exceeding the limit in the field of exploitation of nature and its proliferation is the Qur'ānic way of explaining this general Islamic cast.

Islam's Means for the Growth of the Production:

Islam at the time it affiliated this principle and made increase of production and material wealth its objective and target enlisted into service all its doctrinal potentialities for the realization of this target and the creation of the means and reinforcement which are in harmony with these potentials.

The means for the realization of the target which it enlisted are of two kinds: -

There are the doctrinal means, the creation and vouchsafing of which is a part of the functional duty of the social doctrine of Islam. Then there are the purely applicatory means which a state which affiliates that social doctrine carries out by prescribing a practical policy accompanying the general doctrinal direction.

Islam increased the means, which come under its orbit as a creed professing the social doctrine and a vehicle of civilization in general.

A. Islam's Means on the Intellectual Side:

On the intellectual side, doctrinal means which Islam adopts are to inspire man with enthusiasm for work and productive activity. It puts high value upon labour and linked it with man's dignity and prestige and his position with God and even in his mind. By that it made terra humanus (human race's earthly abode) good (fit) for productive drive and increase of material wealth; and gave such moral standards and clearly defined criteria in respect of employment and unemployment not known before. In the light of these standards and criteria, work becomes a rewardable act of worship for a man. The man who labours for earning his livelihood becomes more meritorious person before Allāh than the worshipper who does not work for his livelihood and idleness or withdrawal from work becomes a defect of man's humanity and a ground of his littleness.

It is in the tradition that when al-Imām aṣ-Ṣādiq (a.s.) inquired after a man, he was told that while he is reduced to poverty, he keeps himself at home engaged in devotional acts and his brothers provide him with the means of his livelihood. To this the Imam said: "He who works for his livelihood is greater devotee than him."

It is quoted that the Messenger of Allāh (*s.a.w.a.*) one day raised the hand of a hard-working tailor and imprinted a kiss upon it, saying: "Seeking of the lawful is a duty of every believing man and woman. One who eats what he acquire by the pains-taking toil of his hand, will pass over the *ṣirāṭ* like the twinkle of a lightening flash, he who eats what he earns by the painstaking toil of his hand, Allāh will look upon him mercifully, thereafter, He will never punish him. He who eats what he

earns lawfully with the painstaking toil of his hand all the doors of the paradise will be made open for him to enter it through any of them.”

In another tradition it is reported that once a man passed by al-Imām Muḥammad ibn ‘Alī al-Bāqir (a.s.) while he (the Imām) was engaged assiduously working in his farm. Seeing the Imām full of sweat by the toilsome labour, the man exclaimed: “May Allāh do good to you! Please tell me what, if death comes upon you while you are thus engaged?” He (the Imām) replied – and his reply expresses the meaning of labour in Islam: “If death were to come to me while I am thus engaged, it would come to find me engaged in rendering my obedience to the commandments of Allāh.”

The Messenger of Allāh (s.a.w.a.), as it has come in his sacred biography, when he used to see a person of impressive appearance he used to think highly of him and to inquire his profession or business. If he were told that the man has no any profession nor any work to pursue, the man would drop in his (the Prophet’s) estimation, and used to say: “If a believer has no profession, he lives with his religion” (i.e. makes his religion as a mean of livelihood).

In several other traditions, work (for livelihood) is made a part of *īmān* (faith). It is said therein: “To make use of a property in a proper way is a part of faith”. In another tradition of the Holy Prophet it is said that there is nothing whatever a believer sows or plants and which man or beast feed upon but will be written down in his account as *ṣadaqah* (a charitable act).

It is reported from al-Imām Ja‘far aṣ-Ṣādiq (a.s.) that once said to Mu‘ādh – one of his companions, seeing him retired from his business: “O Mu‘ādh! Have you grown weak for business, or you have forsaken it?” Mu‘ādh replied: “I have neither grown weak nor forsaken it, but I have a plenty of wealth in my possession, and none has any due to me; and I do not see myself to consume it till my death”. The Imām, thereupon, told him advisedly: “Do not give it (trade) up, giving it up is to lose one’s wits”.

In another assembly meeting with the Imām, returning a reply to one who asked him to pray to Allāh to give him means of livelihood said: “I will not pray for you. Seek it in a way as Allāh, the Exalted, has asked you to seek it”.

It is narrated that when the verse: *And for him who fears Allāh, He*

prepares a way out and provides for him (his livelihood) from the source he could never imagine (65:2-3), was revealed, some of the companions (of the Holy Prophet) secluded them-selves in their homes and engaged themselves in worship (of Allāh); and they said: "Surely Allāh is sufficient for us." Then the Messenger of Allāh (s.a.w.a.) sent them (a message) saying: "Surely whoever acts like that, Allāh will never grant his prayer, it is upon you to seek it (livelihood)".

Just as Islam stands against a life of an idle man and urges him to work, similarly stands against some material wealth to remain idle and freezing of others, withdrawing from the field of the productive and profitable utilization, so also it induces to employ maximum possible forces of nature and its wealth to productive use and to the service of man in the field of profitable productivity. Islam considers the idea of keeping idle some sources of nature and material, and pays no heed to their development and utilization a kind of denial or a want of gratitude as to the gift which Allāh has bestowed upon His bondsmen. Allāh, the Exalted says:

Say: "Who has forbidden the beautiful gifts of Allāh which He has produced for His servants, and the things clean and pure (which He has provided) for sustenance?" Say: "They are, in the life of this world for those who believe, (and) purely for them on the Day of Judgment. Thus do We explain the signs in detail for those who understand".(Qur'an, 7:32)

He says, passing a death sentence against the superstitious taboo in respect of certain animals. Animal wealth (prevalent among Arab people): *It was not Allāh Who instituted (superstitious like those of) a slit-ear she-camel, (bāhirah), or a she-camel let loose for free pasture (sāibah) or idol sacrifices for twin-births in animals (waṣīlah) or stallion-camels freed from work (hāmmi).. It is blasphemers who invent a lie against Allāh. But most of them lack wisdom (5:103).*

He calls upon to put to use different fields: *And He it is Who made the earth manageable for you to traverse ye through its tracts and enjoy the sustenance which He provides; But to Him is the resurrection (67:15).*

Islam gives preference to productive investment of money to the consumptive use of it, out of its eager desire for the increase of production and the growth of wealth, as this can be seen from the quoted

tradition of the Prophet and of the Imāms forbidding the sale of landed property or house and frittering away the money realized from this consumption.

**B. Islam's Means (for the Growth of Production)
on Legislative Sides :**

As for the legislative side there are extent in numerous fields, Islamic legislative enactments which are in agreement with the principle of the growth in which Islamic system of economic believes and which help its adaptation and practical application.

We present a few of these legislative inactions and prescripts:-

1. Islam's prescript ordaining seizure of land from the possession of its owner if he lets it remain idle or neglects it till it becomes a waste and is rendered impossible for cultivation. On the basis of the prescript *waliyyu 'l-amr* (the Head of the State) is empowered to seize the land in such a condition, from its owner and take it in his possession so as to put it to the best of it productive use in the way he chooses, as it is not permissible to withhold land from performing its positive productive role; on the contrary, since it is necessary that the land always continues to give its full share conducive to human opulence and make the life enjoyable, so, in case when the right of private property, stands in the way of playing this role, the law ordains that this right be done away with, and the land be adapted to a form which makes possible to its productive utilization.¹

2. Islam prohibits *ḥimā*. *Ḥimā* devotes a person's taking possession of an area of open space of waste land by force and not by the virtue of doing the work of turning it to render it fit for cultivation and turn it to productive fructification. The law of Islam links the right to the land with the work of reclamation and so on and not with taking forcible possession of it. Force has no business with reclamation and rectification of the land for the good of man.

3. Islam does not give to individuals who were the first to put to productive use the material sources of nature, the right of freezing those

¹ See vol.2, pt.1, ch.2, dealing with The Theory of the Pre-production Distribution.

sources or delaying the work of reclaiming them; nor does Islam allow them to keep for themselves those reclaimed sources in case of their discontinuing their work on that score, since their domination of these source will lead to the deprivation of the availing of the production of the potentialities from these sources.

So Islam has charged the *waliyyu 'l-amr* (Head of the State) with the task of taking away the material sources of nature from the hands of the individuals who have reclaimed them if they - stop the work of doing so and if he is not able to prompt them to reconstitute their work.

4. Islam does not empower the *waliyyu 'l-amr* to assign to an individual a piece of land except the one who has the capacity to fructify and do the work on it. Since the piece of land which is beyond his capacity to put to productive utilization will mean wasting and frittering away the material wealth of nature and their productive potentialities.

5. Islam has made illegal the acquiring gain without work by way of an individual's giving a piece of land on lease to another individual at a rate higher than what he rented in order to acquire the difference between the two rates of the rent and the foregoing hypothetical supposition of what we have discussed previously.

It is obvious that the elimination of the part of the intermediary between the owner of the land and the farmer who directly cultivates is conducive to abundance of production, since the intermediary plays no positive part in the production but live at the expense of production and not rendering any service towards it.

6. Islam forbids interest, and abolished usury of the capital. Thereby, it has insured the transformation of this cash capital in Islamic society to a productive capital giving its share as to commercial or industrial enterprise:

This transformation (of the cash capital) ascertains two gains for production:-

One of the gains is to exterminate the bitter conflict between the interest of trade and industry and the interest of the money-lending business because the capitalist in a society which believes in the institution of interest, always look forward to the golden opportunity of the time when the need of the merchant and the industrialist becomes acutely pressing and their need of it increases, to raise their rate of interest and keep a tight hold on their purse, to exact the highest possible

price.

But at the time when the demand for money slackens, the need of it by the merchants or the industrials becomes less and the rate of the interest falls, we will find the money-lender becoming liberal by advancing at the smallest return. It is clear that the abolishment of the institution of interest will put an end to this conflict which exists between money-lending tribe and the mercantile and industrial class in the capitalist society, for, the abolishment of it will lead *ipso facto*, to the transforming of the money-lending class which lends its capital at interest to investors of money (*muḍārabīn*) as partners in commercial or industrial enterprises, on the basis of share in the profit.

By this it defines the position of capital, and the capital comes into the service of trade and industry responding to its needs and accompanying its activities.

The second will will accrue, is that the monies which will be invested in the fields of industry, shall go on serving great industrial enterprises and activities of long range with firm determination, surety and peace of mind, because after the abolishment of the institution of interest the money will have before him nothing but a desire for profit and this desire will drive him towards throwing himself into those big enterprising with their tempting incentive of big profits and products. Different will be his case in a society in which the system of interest rules. In that society he will prefer lending his money at interest to his investing it in those enterprises, because, the profit in that case is secure under all circumstances. Moreover, he will prefer to advance his money on short term bill, and would avoid to advance it on long term basis lest he may lose the profit which would accrue if the rate of interest were to rise in the distant future; and on account of this, the borrower will employ their money in short time enterprises as long as the due date of payment will be near so as to return the money to the lender within the specified time along with the amount of interest agreed upon with creditor money-lender. Over and above that the business people under the auspices of the system of interest will not venture upon borrowing money from the money-lender and investing it in any commercial or industrial enterprise unless circumstances demonstrate that they will be able to make profit in addition to the interest which the money-lender exacts. This will hinder them from pursuing many kinds of activities in many circumstances, as it

will freeze money in the pockets of the money-lenders, forbid its casting its lots with the economic field and disallowing any kind of its productive or consumptive out-lay – a matter which will lead to the impossibility of sale of entire commodity goods and to a slump in the market, appearance of crises and convulsive upheavals in economic life. But on the abolishment of the system of interest and the transformation of the usurious money-lenders into merchants, casting their lot in, participating directly in various commercial enterprises and industrial ventures, indeed they will find it to their interest to be content with less profit since they will not be obliged to surrender a part of it in the name of interest. They will find it, too, to their interest to invest their savings from their profit after meeting their needs in productive and commercial undertakings and project. By that will be accomplished the productive and consumptive out lay of money in its entirety instead of its remaining frozen out in the pockets of the usurious money-lending in spite of the needs of the merchants and industrialist for it, and making the investment of a part of the products dependent on its outlay.

7. Islam has forbidden some unproductive crafts (lit. some arts and crafts fruitless from the point of production) like gambling, sorcery (witchcraft) and jugglery. It does not permit earning of income from practice of crafts of this kind that is charging fee for performing them (*And do not swallow your property among yourselves by wrongful means*, 2:188). Indulging in such crafts is frittering and dispersion of men's usefully productive power, and such false returns which are paid to the practitioners of these arts are wasting of that money which could have been converted into an agent of growth and increase of production.

A look at the actual fact of history will reveal and bring home to us the extent of squandering resulting from such kind of crafts and winnings therefrom, the heavy loss which production and all the sound objectives had to suffer on account of the dissipation of the powers, efforts and money on the score of it.

8. Islam has forbidden hoarding of money and their withdrawal from circulation and freezing it. It has done this by imposing tax upon whatsoever of the hoarded gold or silver coins on the basis of which the Islamic State runs. This tax is *zakāt*. *Zakāt* tax exhausts the hoarded wealth with the passage of time because the imposition of it recurs every year and cuts off two and a half per cent of the hoarded money. The tax is

not left off being imposed till the hoarded money is reduced to twenty dīnār. On account of this it is regarded a gradual appropriation to State treasury, money which is hoarded and from utility freezed out. Imposing of this tax upon such hoarding, all of the monies diverted to fields of economic activities and these perform a positive part in the economic life of the society. In that way production earns much from monies which, but for the tax on the hoarded wealth would choose to disappear in the pockets or coffers of their owners instead of participating in the industrial, agricultural and other economic schemes.

However, Islam's forbiddance of hoarding is not a mere accidental phenomenon of Islamic legislation, but is expressive of one of the sources of the most important difference between the Islamic economic doctrine and the capitalist economic doctrine. It reflects a method by which Islam has been able to relieve (free) itself from the problems resulting from the anomaly of capitalist role of monies which leads to grave crises and which threaten the movement of production and storms continuously the capitalist society.

In order to make conspicuously clear the momentous difference between the two doctrines on this point, it is necessary for us to distinguish between the original part of money and the incidental part which it plays under the auspices of capitalism and to grasp the difference between these two parts of it and their effect on the production, etc.

Money by its nature is a medium of exchange. Man employed it serviceably in respect of exchange to get over barter difficulties which are born of exchanging of products directly. The premier produces, after adopting the system of the division of labour and after setting up their economic life on the basis of exchange, had found that direct exchange of their produces entailed hardship upon them because if a producer of wheat happened to be in need of wool, he would not be able to obtain it from the producer of wool in return for wheat, unless and until the producer in his turn happened to be in need of wheat. If the shepherd desired to obtain his daily need of wheat, he will not be able to obtain it by way of barter because the price of the sheep which he breeds is greater than the quantity of wheat which he wishes to obtain for his daily need and it will not be possible for him to portion the sheep. In addition to this, direct barter of produces faces the difficulty of determining the value

prices of things available for exchange, since it is inevitable to have knowledge of the value of a commodity comparatively with the value of all the other commodities, so as to know its value relative to them all (see vol.1, pt.2, p.132). The device of money is the remedy of all these difficulties, since it plays the part of a general scale of value on the one side and becomes a medium of exchange on the other side. On the former side it serves as a specifier of the prices of things for, by comparing the value of all the commodities with the value of a commodity which will yield their values are monetarily determined, on the latter side money will be used as a medium of exchange. After exchange was established on the basis of barter, the sale of wheat with wool, – came money and the operation of sale was transformed into two operations, that is operations of buying and selling. The owner of wheat sales wheat for a hundred dirham then performs another operation. He purchases with this money his need of wool. Thus, instead of the system of direct exchanging of commodities, two systems of exchanging of commodities arose and on account of it the difficulties of barter system came to an end.

Thus, we learn that the real part to perform which money had been brought into existence was the part of a scale of common value, and a common medium of exchange.

But money after that was not confined to its discharging this part of it and performing its function of getting over the hardships and difficulties of the barter system but was employed for playing another part which was not related to get over these hardships and difficulties (i.e., the part of hoarding and accumulation). It was in this way that the entering of money in the field of barter, transferred one operation – buying of a quantity of wheat with a quantity of wool – into two operations. It so became that the producer of the commodity of wheat will sell the produced commodity and then will buy a quantity of wool after he used to sell a quantity of wheat and buy a quantity of wool in one single exchange transaction. This separation of the two operations – the selling of wheat and the buying of wool – enabled the seller of wheat to put off purchasing of wool at some later date, not only that it enabled him to sell wheat not for anything but simply by his desire to convert wheat (he holds) into money (cash) and put the money for his timely need. From this arose the money's role as an instrument of hoarding and accumulation of wealth.

This incidental role of money as an instrument of hoarding and accumulation played a most grave part under the auspices of capitalism. It encouraged hoarding; made interest a great force for beguile to it. This leads to the disturbing or throwing out of order the balance between the entire demand and entire supply of the total commodity productively and consumptively. While this balance was guaranteed in the epoch of barter system, which is carried out on the basis of direct exchange of products with products. The reason is that the producer in epochs produced only to consume what he produced or exchanged for another commodity which he would consume, so the commodity he produces always guaranteed its proportionate demand. Hence, the production equate with consumption or total supply with en-tire demand.

But in the age of money, after the detachment of the buying operation from selling operation it is not necessary for a producer to have with him demand proportionate to the quantity of commodity he produces, since it is likely that he will produce the commodity with the intention of selling it and obtaining money for it in order to add it to whatever quantity of it he has saved up and not to buy with it some other commodity. In such a time there will be found a supply for which there is no demand. On account of this the balance between common demand and common supply will be disturbed and this disturbance will deepen proportionately the intention expresses itself as a natural want of hoarding up and the manifestation of the desire of accumulation with the producers and sellers becomes larger. The result of it a great portion of produced wealth will remain indisposed of and the capitalist market will undergo the difficulties of its disposal as well as the crisis of its amassing; and the movement of production and subsequently the general economic life will be exposed to the gravest of dangers.

Capitalism, for a long space of time, did not realize the truth of these difficulties which accrue from the turn of hoarding which money performs in context of it with the theory of disposal of money according to which whenever a man wishes to sell a definite thing, he will demand money against it not for itself but will do so in order to obtain another commodity which will satisfy his need. This means that the production of commodity creates a demand for a like commodity so the demand and supply always equate.

Then, the theory takes it for granted that the seller of a commodity

always sells a commodity with the aim of buying another commodity in spite of the fact that such a thing is true in the age of barter system wherein the selling and buying operations are double-folded. However, it is not true in the age in which monetary payment system is followed. In that age it is easy for a merchant to sell his commodity with the intention of obtaining additional money and hoarding and amassing up of it for the sake of investing it in the operations of lending it at interest.

In the light of these information in respect of money and its real role and its incidental role and grasp the essential difference between Islamism and capitalism, while the capitalism admits employment of money as an instrument of hoarding and encourages it but legalizing the system of interest. Islam carries out a campaign against it by imposing a tax upon the hoarded, amassed money and encourages the expenditure of money in the consumptive and productive fields so much so that it is given in a tradition on the authority of al-Imām Ja‘far aṣ-Ṣādiq (a.s.) that: “Allāh has granted you redundancy of riches so that you spend it. He has not given you to amass it.”

Islam by its campaign against amassing of money puts an end to one of the gravest of the difficulties of production from which capitalist society is suffering, and that on the knowledge that the Islamic society, the economic affairs of which are regulated by the Islamic laws is not obliged to amass and accumulate money for the sake of the growth and increase of production and for the setting up of great schemes or project as is the case with the capitalist society.

The capitalist society will strengthen itself through amassing and accumulation, the building up of huge amounts of capital money, as a result of the accumulation of savings by way of banks and it will be able to employ those tremendous amounts of accumulated savings, in building up huge productive projects. That is so because, it is a capitalist society and the institution rules it. So it is inevitable to seek the help of big private properties put a foot in any big productive project. Since it is not feasible to build up those properties except by encouraging of saving and the pooling together of the savings thereafter through capitalist banks, the capitalist society is obliged to the adoption of these measures for its growth and expansion. But the Islamic society can rely upon the sectors of common and state property for great productive projects and leave to the sector of private property ample rooms to exploit their potentialities.

9. Forbiddance of idle amusements and hectic diversion. There are traditions prohibiting of whatever of the entertainment which divert one's mind away from God and prevent one from remembrance of Him and preventing one from indulgence in several kinds of entertainments, amusements and diversions which melt the vigorous (lit., energetic, earnest, serious) personality and the prime bloom of youth of a man, and which subsequently lead to his withdrawal from fields of genuine fruitful fields of production and labour and to his preference of a life of as much of amusements and diversions which are brought by circumstances, to a life of diligence and (earnest) labour and kinds of spiritual and material operation of production.

10. The endeavour to the prevention of the concentration of wealth in accordance with the verse of the holy Qur'ān (*in order that it may not [merely] make a circuit between the wealthy among you*, 59:7). We will explain this when we take up the study and examination of the theory of social equilibrium in the Islamic system of economics. This prevention of accumulation of wealth though it is directly connected with distribution, but is, also indirectly in connection with production, and leads to its damage. When wealth gets concentrated in the hand of a few men, prevalence of misery will become general and the wants of the largest of the large number will become painful acute. Result of this will be that the common people will be unable to consume such quantity of the commodities as well satisfying their needs on account of the reduction of their purchasing power. So large quantities of produces will remain heaped up, unsold, slump will dominate industry and commerce and production will be suspended.

11. The retraction of commercial manipulations, and consideration of them in respect of the fundamental principle as a branch of production; as will be given at the last stage of the revelation of the theory of production. We shall then see the effect of that on the production and growth.

12. Islam allows that the wealth of an individual to be given to his near relatives after his death. The order to this effect is the positive side of the rules of inheritance. It may be regarded as an incentive factor in impelling man towards work and the pursuits of activity of economic complexion, in certain sectors. Not only that but a main factor at the end part journey of a man's life wherein the thought of future become faint

with him, and is replaced by the thought of his children and kiths and kins. Now, he will find in the rules of inheritance concerning distribution of his wealth and property after his death among his near relatives, that which will incite him to work and drive him to strive for the increase of wealth, out of his eagerness for their welfare, as those who will keep alive his name after him.

As for the negative side of the rules of inheritance, they are which deal with the cutting off of his relation with his property and wealth after his death. By these rules it is not permissible for him to settle the fate of his property of his own. This injunction is the result of the general theory of pre-production distribution and is connected with it as we have previously learnt.

13. Islam has formulated the legal principle of social security as we will explain in the coming discussion. Social security plays a great role in a specific sector, because an individual's feeling that he is given a guarantee on the part of the government that the level of his social status, honour and dignity in life is vouchsafed to him even if he fails or suffers loss in his undertaking. This will act as a great psychological prop and increase his enthusiasm. It will drive him to various fields of production. It develops in him a factor to inventiveness and novel contrivance, contrary is the case of one who lacks this guarantee and has not the feeling of such a security. Such a man on many occasions will draw himself from a kind of work and innovation out of fear of probable loss which will threaten not only his wealth or property but also threaten his life and his honour so long as he will not find one who will guarantee him and provide him with the means of his leading an honourable life in case he were to suffer the loss of his money and wealth and were lost in the whirlpool of a great sea. So, he has not the boldness and that resolution which social security awakens in the hearts of individuals who live under its shelter.

14. Islam has declared as unlawful giving social security to able bodied men, who are capable of engaging themselves in economic activities, and has prevented them from living on alms. By this, it has closed down upon them a way to run away from fruitful work. This naturally will lead to recruit their man-power to productive and fruitful work.

15. Islam has prohibited extravagance and squandering. This

prohibition puts a limit to consumptive needs. It makes ready a great deal of money for productive expenditure instead of consumptive expenditure in the fields of extravagance and squandering.

16. Islam has made obligatory upon the Muslims to acquire a sufficiency of the knowledge of all the arts and crafts whereby life is regulated.

17. Nay, Islam is not satisfied with this alone. But has made it a duty imposed upon the Muslims to obtain the greatest amount of that, too, at the highest level, having general information in all the fields of life, in order to facilitate the Islamic society's appropriation of all moral, material and spiritual means which would help it in playing its role of leadership in the whole of the world and whatever of the means as to production that may be therein and their variegated possibilities. Allāh, the Supreme says: *And prepare against them what force you can* (8:60).

Here the word "force" which occurs in the Divine text denotes unbounded absolute meaning. It includes all kinds of power which add to or increase the ability of the nation of the (*ummah*) guided to carry its mission to all the nations of the world. Also, in the vanguard among those powers, are the moral and material means for the growth and increase of wealth and placing nature at the service of man.

18. Islam has enabled the State to take leadership in all the sectors of production by way of its pursuit of the public sector. Obviously, by putting a great sphere of State property and public property under experimentation which the State carries out will make from this experimentation a power directed and guided to other fields. It will enable to similar projects of production to seek guidance from the experience gained in these experiments and to follow the best styles and modes for the improvement of production and increase of wealth.

19. Islam has conferred upon the State power and authority to the utilization of it in the development of public sectors. By this the State will be able to transfer a part of the total existing man-power from private sector, saving it from its being dissipated and will be able to ensure giving all of the available man-power's participation in the overall production movement.

20. Lastly, the State has been given – on the basis of definite norms which we shall shortly examine from the coming stages of the inquiry of the Islamic theory of production – the right of the supervision

over the operation of production and the control planning of it, so as to guard against its following into chaotic disorder or a prey to high-handedness leading to paralysis of it and to causing of violent disturbance of economic life.

C. Economic Policy for the Increase of Production:

These are those services which Islam, as a doctrine, has rendered to the cause of the growth of production and the increase of wealth. After rendering these services to that cause, it has left to the State to examine the objective conditions and circumstances of economic life, and make a survey and take a census of whatsoever the natural wealth which exist in the country, and take a comprehensive view of the reserved man-power the society treasures and the difficulties and the life it is living. Then in the light of all that, and within the terms of the doctrinal limits, it will formulate an economic policy which will lead to growth of production and increase of wealth, and contribute to ease of life and comforts of living of the society.

On the basis of this, we will learn the relationship of religion with the economic policy which the State lays down and fixes a scope of time of five or seven years or a more a less time for reaching a definite objective or target at the end of that period. Such a policy is not a constituent part of religion, nor its determination and formulation, a function of religion. The reason is this: The policy is subject to change and modification with the change of circumstances and the kinds of potentialities which the society possesses as well as the nature of the problems and difficulties overcoming of which may be inevitable. For, the inhabitants of thickly populated countries differ from the inhabitants of the thinly populated countries with the wide boundary lines, as to their respective possibilities and their respective problems. Also, the modes of overcoming these difficulties and the mobilization of these possibilities. Thus, for every objective circumstance affects the determination of the policy, which under that circumstance should be pursued.

Therefore, it will be necessary for religion to leave the laying down of the economic policy to the State to make decision which agrees with circumstances which surround it. Religion will confine itself to formulate fundamental objectives and aims for the economic policy, and its general

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limits and its general religious frame, and it would be obligatory upon the State to bind itself to it and formulate its policy within its framework.

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WHY DO WE PRODUCE?

We were examining from the theory of production the point on which there is a doctrinal unanimity between ideological trends of different economic systems. We have made it a pivotal point to start from in our approach to the study and examination of the doctrinal differences in detail between these systems of economics.

We have already learnt that the increase and growth of production and the maximum fruitful utilization is the fundamental principle of the Islamic theory of production. It is an objective on which the school of Islamic system of economics agrees in full with the school of all other systems of economics.

Though there is unanimity between these schools on this principle, yet they differ among themselves on the facets of details and their ways of thinking about it due to their laws of thinking and their cultural frame and mould as well as their understanding of universe, life and society.

For example, there is a difference between them about the fundamental objective as to the increase of wealth, and its role in the life of man. So the question: Why do we produce? And: What is the role of wealth? Every school has a particular answer conformably to its ideological basis and its general outlook it has adopted for itself.

We, in our study of Islamic doctrine of economics theory of growth, or for that matter at the time of our study on the theory of any other doctrinal system of economic in that respect will find that to know the system's belief about the principle of production is not sufficient. Rather

than that we find we will have to have a comprehensive knowledge of its ideological basis of it which explains the conception of the doctrinal system about wealth as well as the role. The past ideology plays, and the object it lays down, since the growth of wealth adapts itself to its ideological basis and its general outlook connected with it. It is indeed that the growth and increase of wealth differs according to its specific ideological basis from another ideological basis in this respect, conformable to the framework and method of the realization of it which the ideological basis will impose upon it.

For the sake of determining the ideological basis of the growth of wealth, we cannot separate the economic doctrine as a constituent part of a complete cultural complex from the culture to which it belongs and the conceptions of them about life and the universe.

It is on the basis of this we will choose the Islamic system of economics and capitalist and study the conceptions of both, as well the part each one of them plays and the object each of them will pursue. But we will study them not only as merely two systems of economics but in addition to that we will study them as two different cultural tendencies in order to present the ideological basis for the increase of production from the point of Islamic system of economics in contrast with the ideological basis of the capitalist system of economics for the increase of the production.

Now in the material culture which capitalism represents its historical doctrinal economic facet, the production of the increase of wealth is habitually regarded as a chief objective and a basic goal because wealth is everything according to the criteria by which the man of this culture regulates his life. He looks for no other goal or objective beyond it. He, therefore, strives to work for the increase of wealth only for the sake of the wealth itself and for the realization of the achievement of maximum material comfort and well-being.

Likewise, capitalism looks about in the methods which it adopts and the course which it follows, the attainment and realization of this objective for the growth of wealth as in whole and apart from distribution. It thinks the objective as achieved and fully realized if the total wealth of the society increases irrespective as to the scope and extent of its dispersion in the society as well as without any consideration of every member of the society has obtained his share of

the ease and comfort which increase of wealth has made available in abundance. It has on account of this encouraged and promoted to employ industrial machinery in the machine age of industry because employment of machinery helps increased production and increase of the wealth of the society, even if it rendered idle thousands of those who did not possess the new machine and led to the collapse of small enterprises.

So, the wealth is the chief objective in the material culture, and the growth in the capitalist sense is measured by overall total increased wealth of the society.

In the capitalist thinking binds the difficulty of economic with the scarcity of production and niggardliness of nature and its refraining from response to man's every demand. Accordingly, the remedy of the difficulties is bound with the increase of production and the maximum exploitation of the forces of nature and its treasures by frustration of its resistance and by its increased subjugation to man.

But Islam's position is different from this.

Wealth is not the chief objective of Islam, its seeking it as an object notwithstanding. Nor does Islam look about the increasing of production apart from distribution or on the basis of total wealth.

Nor does the economic difficulty arise from scarcity of production, so its remedy will be for over all increase of wealth.

In what follows hereunder the stand point of Islamic system of economics is given.

1. The Islamic Sense of Wealth:

The view of Islam about wealth and what is connected with Islam's view about wealth as an objective. We can determine in the light of the texts which deal with this side of it and try to explain the Islamic realization of wealth.

We can divide these texts in two classes. The examiner of these texts will find, at the first blush, a contradiction between them as to their ideological contributions about wealth, its objectives and its role. But by the operation of putting together of these contributions will revolve the contradiction of those contributions and a complete sense of Islam about the increase of wealth will take a concrete form on both scores.

Now the following traditions may be put in the first of the two classes:-

- a. The Messenger of Allāh (*s.a.w.a.*) said: "Riches are the prime help to the fear of Allāh (piety, *taqwā*)."
- b. From al-Imām aṣ-Ṣādiq (a.s.): "The world is the most excellent aid for the world hereafter."
- c. From al-Imām al-Bāqir (a.s.): "The world is the best help to the seeking of the world – hereafter."
- d. From the Messenger of Allāh (*s.a.w.a.*): "O Allāh bless us and prosper us in the matter of bread, part us not from each other. Had we not the bread, we would not have prayed; not have fasted; nor discharged our duties to our Lord."
- e. From al-Imām aṣ-Ṣādiq (a.s.): "No good is the man, who does not collect money in the lawful way whereby he saves his honour, discharges his debts and discharges his obligations to his near relatives."
- f. A man told al-Imām aṣ-Ṣādiq (a.s.): "By Allāh I do seek the world and wish it to be given to me." The Imām asked: "What do you wish to do with it?" He said: "I wish to meet with my need, my children and family members' need; to spend it in the way of Allāh; to go to pilgrimage and perform 'umrah with the help of it." The Imām replied: "This seeking is not for this world. It is seeking the world-hereafter."
- g. It is stated in the tradition: "He is not one of us who renounces this world for the next world; nor he, too, who renounces the hereafter for this world."

The second group consists of the following traditions:-

- a. From the Messenger of Allāh (*s.a.w.a.*): "He who loves this world does harm to his next world."
- b. From al-Imām aṣ-Ṣādiq (a.s.): "The love of this world is the head of every sin."
- c. Also from aṣ-Ṣādiq (a.s.): "Far removed from Allāh will be that servant of Allāh who fancies nothing but his belly and his private parts."
- d. From Amīr al-mu'minīn, 'Alī (a.s.): "The greatest help to morality is abstinence from the world."

THE THEORY OF PRODUCTION

It is easy for anyone to see the difference between the two sets of traditions. In the first set the world, worldly wealth and riches are stated to be the best help to the life hereafter, while the second set it is stated to be the *sunnah* and chief part of every wrongful and sinful act.

But this contradiction can be resolved by a process of synthesis. Material wealth and its growth is the best help to the life hereafter, and the main part of all the sinful act, because it has two extremes and it is the psychological fame which brings to Light whether it has this extremity or that extreme. In the view of Islam, wealth and its increase is an important objective, but it is an objective of means not an objective of end. Wealth is not the chief or main objective which heaven has placed before man on the face of the earth but as means for a Muslim to discharge his role of vicegerency and to employ it for the sake of the development of all the human powers and elevate man's humanity in all the fields, moral and material. So, the increase of wealth for the realization of main objective of man's vicegerency on earth is the best help to the life hereafter. There is no good in the man who does not strive for it. He does not belong to the fold of Islam who as a bearer of the life mission abandons it and neglects it. As for striving for increase of wealth on its account and for its sake, as well as a main field which he is to pursue in his life and to be absorbed and wholly occupied in doing so, well that is summit and main source of all the wrongful and sinful acts. It is this which removes man far from his Lord, the Nourisher, and which requires to be abstained from.

Islam wants a Muslim to strive for the increasing of wealth in order to gain mastery over it and to derive the benefit from it as a whole, in its creation and not to let it get mastery over him, surrender to it the rein of leadership and to obliterate the great objectives from before him.

Wealth and the modes of its increase which stands as a screen between a Muslim and his Lord, the Sustainer, makes him forget his ardent spiritual desires, disables him from discharging the great mission of establishing and maintaining of justice, on this planet, and holds him fast to the earth, Islam does not admit. Wealth and the modes of its increase, which affirms Muslim's relation with his Lord, the Bounteous Lord affords him to perform his acts of worship in ease and comfort, opens up before him a wide scope for all his talents with powers of their development and perfection and helps him to realize the ideal of justice.

Brotherhood and honour, this is the objective which Islam places before Muslim and drives him towards it.

2. Coordination of Growth Production with Distribution:

The view, connected with the capitalist ideology about the increase of wealth, being at the process of the increase of wealth apart from (its being) a kind of distribution. This view Islam rejects and coordinates the increase of wealth with distribution as an objective and the extent of ease and comfort of individual members of the community, for the growth of wealth in the Islamic sense is an objective of means and not an objective of end as we have learnt from the previous extract. Hence, unless the operation of the increase of wealth participates in imparting wide-spread dispersion of comfort and ease among the individual members of the community and affords them to fulfil the conditions which enables them for giving free play to their choicest natural gifts for the realization of their mission, without this, the increase of wealth does not perform its goodly role in the life of man.

Therefore, we find that the letter which al-Imām ‘Alī (a.s.) wrote to the Governor of Egypt in which he delimits the Islamic programme, he should follow – at the time he wanted to speak about the increase of wealth as an objective of a pious society – in terms of the words of the letter – he did not depict the heaping up and accumulation of formidable pile of wealth but painted a picture of ease and comforts of life reigning over all the members of the society of the pious. He stated this to confirm and lay emphasis on the fact that the growth of wealth is an objective only as far as it is reflected in the life of the people and in their means of living. But when wealth increases in a way disconnected from the life of people and mass of the people devote themselves to the service of its increase, and not the increase of wealth devoted to the service of the people, then in such a case it acquires a kind of idolatry and becomes an objective of end and not an objective of means. The saying of the Messenger of Allāh (s.a.w.a.) confirms it, explains this kind of wealth and warns against the danger of it. The saying is this: “The yellow (golden) dīnār and white (silvery) dirham will destroy you as they have destroyed others before you.”

On this basis when Islam makes increase of wealth the object of the

society it sets up as its goal is the coordination of the increase of wealth with the general ease, well being and comfort of the people and refuses any mode of the increase of wealth which interferes with its realization and which is detrimental to the people instead of being conducive to their comfort and well being.

In the light of it, we can guess that if Islam, instead of capitalism, had held the rein of authority at the time of the rise of steam engine, age of industry, it certainly would not have permitted the use of the new machine which doubled and redoubled production as far as it exposed to peril and put in jeopardy thousand of manual artisans except after gaining mastery over the difficulties which the machine would have entailed upon these artisans, because giving permission of the machine for the increase of production before having overcome these difficulties and the misery, it would have cause, it would not be an objective of means but an objective of end.

3. Islam's Conception of Economic Problem:

Lastly, Islam thinks that the economic difficulties are based on the actual conception of the affairs not arisen from scarcity of material resources nor niggardliness of nature.

True, nature's sources of production are limited and man's need are many and diverse.

Truly, our mythical society will enjoy unlimited sources and the plentifulness of the abundance of air, safe and sound from economic difficulties. No poor man will exist, therein for each and every man will be able to satisfy all of his needs in this paradise.

But this does not mean the economic difficulty which troubles humanity arises from the non-existence of this paradise. Rather, the attempt at the explanation of it on the basis of it is nothing more than a kind of escape from the confrontation of the actual reason of the difficulty capable of solution by projecting its imaginary, *raison d'être*, the solution of which is not possible in any circumstances, to be a justification for the admission of the conclusiveness of the solution and confines the proportionate treatment of it to the increase of wealth, as an operation, the object of itself that subsequently will lead to the formulation of the economic system in the frame of the difficulty –

instead of discovering a system which will put an end to it, as capitalism did when it projected the mythical facet of the difficulty. It appeared to it that as long as nature is niggardly or is incapable of satisfying all the needs and wants of man, it is but natural for these needs to conflict and interfere with each other and in that case formulation of a system of economics which puts in order those needs and limits what of them should be satisfied, becomes inevitable.

Islam rejects to admit all that in its entirety and looks at the difficulty from its factual soluble side. We find that solution in holy words of Allāh, the Supreme:-

Allāh it is He Who created the heavens and the earth, and sent down out of heaven water wherewith He brought forth fruits to be your sustenance. And He subjected to you the ships to run upon the sea at His commandment; and He subjected to you the rivers and He subjected to you the sun and moon constant upon their courses, and He subjected to you the night and day, and gave you of all you asked Him. If you count Allāh's blessing, you will never number it, surely man is sinful, unthankful! (Qur'ān, 14:32-34)

These holy verses after exhibiting the sources of wealth which Allāh has bestowed upon man assure that they are sufficient for the satisfaction of man's wants and needs and the achievement of what things he asked for (*and He gave you of all you asked Him*). So, the actual difficulty did not arose from niggardliness of nature or its inability of responding to man's needs, this only was created by man himself as the last portion of the verse declares from man's injustice and ungratefulness. (*Indeed man is the most unjust and the greatest of the ingrates*). So man's injustice as regard distribution of the wealth and his ungratefulness in respect of gifts of Allāh, by a thoroughly complete exploitation of the sources favoured upon him by Allāh, the Supreme, are the two paired reasons for the life which the miserable man has been living ever since the remotest ages of history. It is possible to overcome the difficulty by the explanation of it on the human basis and putting to an end to injustice and ingratitude through creation of equitable relations of distribution and the mobilization of all the material forces for the fructification of nature and the uncovering of all its treasures.¹

¹ See, *Iqtisādunā*, vol.1, pt.2, pp.111-113.

RELATION BETWEEN PRODUCTION AND DISTRIBUTION

Does there exist any relation between production and distribution?

It is a question in reply to which Islam and Marxist differ fundamentally from each other on the doctrinal plane of economics.

Marxist affirms the existence of this relation. It believes that every form of production presupposes, conformably to the law of evolution and change, a particular kind of distribution, consonant with that form of production. It accompanies its growth and its evolutionary change. When production assumes a new form which does not agree in its movement with relations of distribution which the previous form imposes, it becomes inevitable for these relations of distribution to vacate their place after a conflict and bitter struggle for the new relations of distribution. Coalesce with the dominant form of production helps to development and movement. Thus, Marxism considers that the system of distribution always follows the form of production and adapts itself to its need. This dependence of the system of distribution upon the form of production is an inexorable law of history, unchangeable and unmodifiable. The basic proposition in the life is that he produces and production goes on and increases continuously. And who are those who confer the right of owner-ship of the means of production, and its distribution is accomplished on the basis of slave-ownership or feudal ownership, or

bourgeois-ownership or proletariat-ownership? All this is fixed by the expediency and interest of production itself. Production assumes, at every stage of history, the mode of production timed to the distribution's growth in its frame.

We have learnt this theory of Marxist with expatiation in the first volume of the present book (*Iqtīṣādunā*) and were able to draw from our study a conclusion contrary to the theory, convict it philosophically and scientifically as well as demonstrate its failure of the historical interpretation of it¹ Likewise, we have learnt the standpoint of Islam about this theory and its rejection of the dependence of distribution on the form of production,²

The Guidance of Islam to Guarantee the Equity of Distribution:

Islam when it denies the dependence of distribution upon the form of production and the conditioning it confirmably to the force of the natural law of history, as assumed by Marxism does not sever all the relation (Islamic) between distribution and the form of production. But in its (Islamic) opinion this relationship between distribution and production is not a relation-ship of dependence in accordance with the law of nature, a relation of which the doctrine presupposes. It limits therein production to the account with distribution instead of adopting distribution to conform in accordance with the needs of production, as has been fixed by the Marxist theory.

The idea regarding this relationship stands on the basis of the following points:-

Firstly: Islamic economic system regards the law (the norm) which brings, as a permanent law, invariable and valid for all the times and all the places. It holds unchangeably valid in this age of electricity and atom, as it was held unchangeably valid in the steam age and as it did in the age of wind-mill and manual labour. For example, the law which says: 'It is the right of a worker to keep the fruit of his labour'.

Secondly: It regards the process of production which a worker executes, a phase of that general law in respect of distribution, reclaiming

¹ See *Iqtīṣādunā*, vol.1, pt.1, pp.3-198.

² See *Iqtīṣādunā*, vol.1, pt.2, pp.114-124.

of a dead-land, disembowelling of a water-spring, cutting of wood, extraction of minerals, all these are the process of production. But they, at the same time, fulfil the function of the application of the general law of distribution on the wealth produced. Therefore, the sphere of production, is then the circumstance for the application of the laws of distribution.

Thirdly: That when the production raised its level and its power of possibilities increased, the man's domination over nature would grow and then it would become possible for a man equipped with forces of production to carry out his activity over nature on a scale and scope wider and more extensive than the spheres of production it was feasible for him before the growth of production and the elevation of its level.

From the accounting of these points we learn that, the evolution of production and the growth of its force would make it. feasible for the man more and more utilization of the phase of the application of the general law of distribution in the course of the process of production he is carrying on. This utilization is likely to reach to a degree which will constitute a danger to general balance and social justice, as it obtains in Islam.

Let us take the example of the revival and putting into reclamation of a dead-land. Man in the manual labour age was not capable of putting to tillage distant areas of land. Since the theory does not give permission of the employment of its execution on that account, while he was not able to undertake with the help of the indigenous materials, before the age of instrument recultivation of a dead-land except within specific bound. Therefore, it was not within his power to make misuse of the phase of the application of general law of distribution nor was it within his power to take into his possession huge areas of land, in conformity with the law which confers upon a reclamer of a dead-land, and the right to the ownership. But the age of instrument gives man the power of rehabilitating those huge areas, and make misuse of the phase of the application of general law of distribution. Under this circumstance guiding the application towards the purpose which corresponds with the Islamic ideal of justice becomes inevitable.

From this arises the doctrinal relationship between production and distribution in the Islamic system. In fact, it rests upon the idea of directed application which defines production as a process of application

of the law of distribution, a limitation which guarantees equity of distribution along with its consonance with the Islamic ideals and aims.

Islam embodies the phase of the application which limits production in proportion to distribution, by bestowing upon the State the right of interference to the Head of the State (*waliyyu'l-amr*) as regards the application of the law and forbidding the misuse of it (distribution). In the example which we have offered, the Head of the State possesses the right of forbidding an individual from undertaking revival of a dead-land except within limits which conform to the Islam's idea of social justice. Likewise, it lays down the principle of the State's right of interference. We will examine it, in detail in the future discussion of it.

Thus, we learn that the development and growth of production certainly impose upon the Head of the Islamic State the duty of interfering in the guiding of production and the determining of the spheres of the application of the general law of distribution without touching the essence of the law itself.

This means that the principle of the State interference which permits to its guidance of the application is the law by which Islam ensures the fitness of its general law of distribution and its consonance with its ideas of social justice for all time and place.

* * * * *

RELATION BETWEEN PRODUCTION AND CIRCULATION

Production as we know is a process of evolving of nature, natural material in the best form regarding man's requirement.¹

¹ In the traditional words, production is creation of a new use (of a thing).

We have chosen the first definition of production because those who know it in the second form, have fallen in meaningless generalization. They interpret the use as a quality of a thing which makes it fit for satisfying any need or requirement. They say it is not an intrinsic (subjective) or extrinsic (objective) of a thing but is born merely by the desire for it. Even though this may arise from a false or erroneous estimation of it. For instance, the desire for nostrums (drugs) arising from erroneous belief about its effectiveness in protecting against infections or epidemic diseases.

Definition of production and use of a thing in this shape or includes in the production, and individual's work or convincing the common people with the usefulness or curativeness of a definite thing because this thing creates a new use of it and leads to causing the thing to enjoy the quality of satisfying the general desire in despite of the fact of the individual's performing no work on the substance.

This is the generalization which the traditional definition sustains. Therefore, we said that production is the process of evolving in the best form of nature regarding man's requirements. By this, the work depends upon acquisition of the stamp-mark of production on the created usufruct aimed at a hit performance of a kind of work on nature.

Circulation in material sense means transport of removal of thing from one place to another and circulation in legal sense means – and it is this we propose to discuss here – all of the commercial operations accomplished by way of barter contracts sale, contracts, etc.

Obviously, circulation in the material sense is a variety of process of production; for the transport of a thing from one place to another on many an occasion creates a new use and signifies evolving a material in the best form or shape according to man's requirement, equally on the transport's being vertical. For instance, in respect of mineral works. They carry out the work of removing the primary natural materials from the bowels of the earth to the surface of it or the transport's being horizontal. For instance, removal of a thing to a place nearer to its consumer and making handy delivery of it to them. Since the transfer in this form is a kind of evolution to a better form, in respect to the needs of man.

As regard circulation in legal sense, and the transfer of the right of property from one to another – as we have noticed in the commercial operations – it is a prescribed practical law which must be realized; and it establishes its relationships with production on doctrinal basis.

We can, therefore, study the view of Islam about the relation-ship between the production and circulation and the nature of the connection which establishes it between them on the general doctrinal lines.

The Islamic conception about circulation and its relation-ship with production, doctrinally, does not only participate directly in doctrinal conception but also plays an important part in the formulation of the general policy about the sphere of circulation and the filling of the lacuna which Islam has left to the State to fill according to circumstances.

Islam's Conception of Circulation:

The Islam's conception of circulation which comes to light from the study of the texts and prescriptive dicta of and the general juristic trends is that circulation in Islam from the point of principle is a sub-division of production and should not be separated from its general sphere.

This Islamic conception to which allude to in respect of a number of texts and prescriptions agrees fully with the story and its rise historically and the local needs and requirements which begot it.

Circulation, most probably did not exist in societies in wide sphere in

which what they produced was sufficient to satisfy their requirements for the reason that the man who live in this self-sufficiency did not probably feel the need of obtaining the produces of another individual in order to carry on a variety of circulation and exchange with that individual. Circulation arose in the life of man as a result of the division of labour which made every man to begin to pursue in accordance with it, a particular branch of production and to produce a quantity of that branch of produce in excess of his requirement and to obtain his entire requirement of a commodity from the producer of that commodity through the medium of exchange – his giving them their requirement out of the commodity produced by him against the commodities produced by them. Multiplicity and diversity of requirements and needs imposed the system of the division of labour in this form and subsequently led to the wide range dispersion of the system of circulation.

The producer of wheat confines himself to the production of wheat, and defrays his requirement of wool by carrying a quantity of wheat in excess of his requirement to the producer of the wool who requires on his part. He hands over to the producer of the wool his requirement of the wheat and receives from him against it the quantity of wool he desires.

We see in this manner that the producer of wheat is directly connected with the consumer, likewise, the shepherd as a producer of wool gets in contact with the consumer of wool in the operation of circulation without the medium of an intermediary, in accordance with this manner the consumer is always a producer as regards to the other.

The varied evolution of circulation gave rise to an intermediary between the consumer and the producer. It comes to be that the producer of the wool does not sell his wool directly to the producer of wheat in our previous example but catches hold of a third person who will play the part of the intermediary between them. The third person will buy the wool not to consume it for his requirement, but to adopt it and render it for the hands of the consumer's receiving it. So instead of the producer of wheat getting in contact with the producer of wool initially, it comes to be that he meets this intermediary who makes wool for the market and makes it ready for sale, agrees with him as to its purchase. From here begins the commercial operations. It then comes to be that the intermediary devotes a great deal of efforts on the producers and consumers.

We learn, in the light of this, that in both periods of circulation or transfer of ownership – the period of the producer to the consumer and the period of the intermediary merchant a work of production was done on the part of one who transfers the ownership of the commodity and receives the price of it. In the first period the producer of wool carries out the work of producing the wool himself, then transfers its ownership selling it in consideration of a return. In the second period the intermediary carries out the work of transferring the production to the market, protecting it and make it ready to give it into the hands of the consumer, when he desires it. This work is (also) a kind of production as we have already learnt.

This means that the benefit or gain which a seller reaps from transferring of the ownership for a return or compensation – and it is what we now call it profit – was the outcome of a productive work which the seller carries out but was not an outcome of the operation of the transfer itself.

But the mastery of selfish commercial motives led to a change and deviation of it from its natural form, resultant of healthy, positive legal requirement and especially, in the present day capitalist period. From that resulted the separation of the circulation and exchange, many a time from production and the transfer of ownership came to be an operation meant for itself without any productive work on the part of the transferor preceding it, which he carries out for the sake of acquiring benefits and profits, while trade was the source of these benefits and profits as subdivision of production, it became a source of merely being a legal process for the transfer of ownership. Therefore, we will find in the capitalist trade that the legal process multiplied in respect of one single property – thing, following from the multiplicity of the intermediaries between the producers and consumers for anything but in order that as many of the number of the capitalist merchants possible may acquire the profit and earnings from those operations.

It is natural that Islam will reject this capitalist deviation because it is contrary to its meaning and conception in respect of exchange and a look of it towards it as a component of production as we have said above. That is why it treats and regulates cases of circulation always with a specific look at it and tends, in respect of legal systems of barter contracts, to a decisive course in the direction of non-detachment of circulation from

production.

Doctrinal Evidences on the Conception (of Circulation):

After seeking to understand clearly where the traces of Islamic conception of circulation ¹ could be found, it is easy to glance at the conception in the doctrinal evidences of Islam and in a collection of juristic prescriptions drawn together in the upper-structure of the law of Islam.

Among the texts which reflect this conception and specify Islamic look, is a text which occurs in the latter of ‘Alī (a.s.) to his governor of Egypt Mālik al-Ashtar. In the letter, ‘Alī (a.s.) lays for him a programme of work and specifies the concepts of Islam, then says: “Then admonish with kindness merchants, men of profession (artisans, industrialist) for the recommendation given and enjoin on them to do good – the resident of them the one troubled about his wealth, one who physically support, they are sources of benefits, the means of public utilities, the importers of far away things and isolated dump places on your land, your sea, your mountain and your plan whence one cannot combine together and venture upon.”

It is obvious from this text that the class of merchant is put in the same rank with the class of professional men, artisans and industrialists and generalizes them all to be the sources of benefits. Just as the merchant creates so also does the professional, artisan or industrialist, and follows with the explanation of the benefit or profit which the merchants create and the operations they carry out the bringing of far removed things and cast out isolated place, which men do not combine to venture upon.

The trade, then, is, in Islam, a kind of production and a fruitful labour and his earnings therefrom is the result of not only for an operation in its legal orbit.

This Islamic conception is not merely the essential of circulation denotes because it presents the basis in the light of which the (Islamic) State fills the lacuna left to it to be filled within the bounds of its

¹ We had better devote this kind of conception with the Islamic trend to distinguish it from Islamic prescriptions.

capacities as hinted earlier by us.

The Juristic Trend Which Reflects the Conception:

As for the prescriptions and legislative enactments which reflect Islam's conception of circulation, we can find it from a number of juristic texts and jurists' opinions as follows:

1. In the opinion of a number of jurists like al-'Umānī aṣ-Ṣadūq, ash-Shahīd ath-Thānī and others: If a merchant, for example, buys wheat but has not taken it in his possession; it will not be permissible for him to make a profit through selling of it at a higher price, but it will be permissible for him after he takes it into his possession even though the legal transfer is completed in the Islamic jurisprudence with the execution of the contract and does not depend on any positive work thereafter. The merchant becomes the owner of wheat even if he did not take possession of it yet, in spite, of that it is not permissible for the merchant to do so and acquire profit in respect of it by selling it at a higher price as long as he does not take the goods into his possession, the desire being that the profit should be linked with work as also to exclude letting more trades being a legal transaction a cover of profit.

There are a number of traditions in which this opinion is indicated:

In a report of 'Alī ibn Ja'far, it is stated that he asked al-Imām Mūsā ibn Ja'far (a.s.) in respect of a man who buys food. "Is its sale permissible before he take possession of it?" al-Imām replied: "If he makes profit then it is not valid before he takes possession of it. But if it was by way of *tawliyyah*, that is he sells it at the very price at which he purchased it without any profit, then there is no objection."

2. In the opinion of al-Iskāfī, al-'Umānī, al-Qāḍī, Ibn Zuhrah, al-Ḥalabī, Ibn Ḥamzah and many other jurists: "If a merchant purchases goods to take delivery at a different time and pays the price thereof forthwith even in that case it is not valid for him to sell the goods after the due date comes to pass, at a higher price before he takes possession of the quantity of the goods he has purchased. Now, if you purchase wheat from the farmer, and it was agreed with him that he will hand over to you the total quantity of the purchased wheat after a month, you paid forthwith the price, it is not valid for you after the passing of the month to sell it for more before you take delivery of the purchased

quantity of wheat and avail of the legal process of the transfer for the sake of acquiring new profit. You can, however, sell the goods at the very price as you purchased it.”

The holders of this opinion rely upon a number of traditions. It is stated in a tradition that Amīr al-mu'minīn, 'Alī (a.s.) said: “He who purchases food or fodder to be given to him after a fixed time, (makes a differed purchase). If its condition was not met with, and cash was taken, then he cannot take anything but his principle, for, on this basis, he will do no wrong, no wrong will be done to him.” In another tradition reported on the authority of Ya'qūb ibn Shu'ayb that: he asked al-Imām aṣ-Ṣādiq (a.s.) about a person who sells in advance a quantity of wheat and date for one hundred dirham, when the time is ripe, the man to whom he made the advance sale comes to demand the goods he had purchased. The man tells him: “By God, I have not more than half of what I have sold to you. So if you wish you can take from me half of the quantity you purchased and half of the cash money you gave me.” He (al-Imām) replied: “There is no objection if he takes from him the cash as he gave it, that is one hundred dirham.”¹

3. In many of the prophetic traditions prohibition against going out to meet the caravans (of merchants) and city-dwellers selling for the desert-dweller. It is given in the tradition that the Messenger of Allāh (s.a.w.a.) said: “No one of you shall meet commercially outside the city nor city-dweller shall sell for the desert-dwellers.”

¹ These texts point only to the law when aimed at the prohibition occurring therein; forbidding the buyer from selling whatever he purchases in advance before taking possession of it after the due date befalls, at a higher price. But if the texts mean a statement (explanation) of what a buyer can demand if the sale contract is cancelled (broken) on the authority of his right of option resulting from the failure of deliver of the commodity on the part of the seller within the fixed time, then the meaning of the prohibition in respect of it will be that if the goods which the buyer purchased in advance are not delivered to him within the fixed time, and the sale deed is cancelled then he has the right to the recovery of the self — same price which he had handed over to the buyer before hand. On this supposition, there remains from the texts for the prohibition against selling it at a higher price before taking delivery.

Receiving or Meeting the Caravan of Merchants' Means:

A merchant goes out of the city and receives owners of commercial goods, buys the goods before they enter the city, returns to the city and sells the goods to the people. And the city-dweller's selling for the desert-dweller means a city merchant takes charge of the village people who are advancing towards the city, carrying with them their fruits and milk products, etc., buys them from them sells and trades with them.

Clearly, prohibition against these two transactions bear the stamp-mark of Islamic trend which we are trying to establish. The prohibition is aimed at dispensing with the intermediary and the parasitic part he plays by standing in front of the way of the owner of the goods meeting face to face the consumers of the goods not because of anything except on the basis of hurling himself between them. The intermediary here, Islam does not welcome an intermediary undertaking which denotes no productive content of productive operation save more aim of exchange for the sake of profit.

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FOR WHOM DO WE PRODUCE?

I wish to project the position of capitalism about this question to prepare, through comparison of the Islamic position, thereby the answer from Islamic point of view with its specific features and characteristically distinctive stamp-marks.

Capitalist Position:

Capitalist system of the doctrine of economic in directing production relies upon the price which determines supply and demand in the free market. The free (*laissez-faire*) capitalist system of economics is based on private enterprises. These enterprises are operated and run by individual and are subject to their will and pleasure. Everyone of these individuals runs his enterprise and draws lines of his production conformably to his interest and his desire to earn maximum amount of profit. It is the sense and feeling of profit which conditions with every individual his production and direction of his activity. Profit follows the movement of price in the market. So, whenever the owner of the enterprise, gets information about the rise of the price of a commodity or an article he directs his attention to the production of that commodity or article in bulk in the hope of earning ample amount of profit. It is obvious that the rise of the price of an article or commodity in the market reflects

in healthy and sound circumstances, an increase in the demand for that article or commodity. It is this (i.e., the rise of the price) which capitalism holds to be responsible for the bond of production with demand, profit being an incentive to production. It is the rise of the price which rules capitalist enterprises with profit and it is the rise of the demand which leads to the rise of the price. So the production, in the end, is directed for the sake of the consumers and conditioned to their requirements which express themselves in the increase of the demand and the rise of the price. In the light of this, capitalist system replies to the posited question. For whom do we produce? that the production is undertaken on account of the consumers and for their requirements and is mutually related forward, backward and direction wise with these needs and requirements.

Criticism of Capitalism's Position:

This is the conspicuous picture of the capitalist production or it is the beauty picture in which the adherents of capitalism seek to project incased in its florid frame in order to establish by proofs the mutual concord and the conjunction, under the shelter of capitalist system of economics, between two lines, production and demand and their general movements.

But this picture, in spite of its being partially true cannot conceal the crying contradiction, under the capitalist system of economic (in the relation) between production and demand. It does expound the mutual sequence of different links between production and demand, but does not specify the purport of demand nor does it uncover the capitalist conception to examine this demand which lures arbitrarily over demand and directs it through the medium of rise in the price of commodity.

The fact is that dividend in the capitalist sense is a cash interpretation of requirement more than its being a human interpretation of it, because it comprises only of a specific part of it – it is that demand which causes rise of price in the market, that is, a demand enjoying purchasing-power and owning a ready cash balance capable of satisfying it. As for those cash show demands which are capable neither of alluring or tempting the capitalist markets, nor of raising the price of the commodity for want of possessing the wherewithals to purchase it, their fate is neglect howsoever importunate and necessary they may be. How-ever, common

and exhaustive for the one who demands must prove his demand with the money he presents and as long as he does not present this proof, he has no right in respect of directing the production more nor have the right of a 'say' in the capitalist economic life, even if it springs from the core of human reality and its over pressing needs.

No sooner we learn this capitalist conception of demand than are dissipated at once all those golden dreams which supporters of free (*laissez-faire*) economic system, weave around the capitalist production and which they adopt them conformably to the wants and demands, because the purchasing power is increased in the case of the fortunate few and reduced in the case of others and the level of basis from which the majority of the capitalist society is composed suffers a great decline. The outcome of this formidable disparity purchasing-power – from the capitalist point of view – will be that the demands possessing enormous purchasing-power will obtain exclusive control of the direction of production and dictate its will and pleasure to it, it being the incentive which lures the owners of the enterprises, make them lick spittle at what will lead to the rise of prices and to the denial on account of this, the living need of the common man, for want of its enjoying the tempting purchasing power.

When the demand used to enjoy enormous force, purchasing power will be able to attract from capitalist market the commodity of necessity and luxury and article of amusement and means of living in ease and luxury. While the indigent demands will be unable to attract entirely necessary things, then that will lead to the capitalist enterprises enlisting all their forces and employ them towards those means of luxurious life and those inordinate greedy desires for the satisfaction of which the variety of the inventions and device of new luxurious article is ceaseless and persistent on demanding articles of merry-making and means of enjoyment and pleasure and the multiplicity of demand from the common people exceeding in number for necessary good and materials for the maintenance of life continue to remain unattended to, except within the bounds of what is put by for the big working hands. In this way, the capitalist markets are filled with varieties of goods and articles of luxury and pleasure while occasionally there is a want of enough quantity of a necessary commodity which can be sufficient to full satisfaction of all.

This is the position of capitalism in respect of its production and

method upon which it relies upon in the determination of its movement.

The Position of Islam:

As for Islam the substance of its position can be given in the following points:-

1. Islam, to satisfy the basic needs and requirements of all the individual members of the society, renders it obligatory for social production to increase production by producing a quantity of commodity capable of satisfying those wants and requirements in a sufficient degree which would permit every individual to take from it his necessary requirement. Unless the level of sufficiency and the minimum limit of the production of the commodity increases it will not be valid to direct the forces capable of increasing that level of sufficiency and the limit of the minimum production of the commodity, to other fields of production for want or need itself plays a positive role in the movement of production irrespective of the economic and cash balance power of that want or need.

2. Likewise, also, Islam makes it obligatory for social production that it does not lead to extravagance and prodigality. Extravagance or prodigality are forbidden in Islam, equally whether it is occurred in an individual's private expenditure or use or in a public use or expenditure by the society in the course of the movement of production. It is also forbidden (in Islam) for one to wash the ground of his house with expensive perfumes, since it is extravagance (*isrāf*). Similarly, it is forbidden to the society or – in other words – producers of perfumes to produce perfumes more than the need of the society and its power of consumption and trade, because the surplus production is a kind of extravagance and waste of the wealth without justification.

3. Islam permits Imām's interference in the production on the following justificatory grounds:-

Firstly, in order to enable the State, to guarantee minimum limit of the production of necessary commodity and the maximum limit which is impermissible to be overpassed. It is clear that the running of the private projects in conformity with the will and pleasure of their owners undirected centrally on the part of the legal authority will lead to periods of complicated and mass production to expose it to

extravagance and wastefulness on one side and to the prodigality to the minimum on the other side and to guarantee the social production running its course between the two limits of excess and paucity by supervision and direction of it.

Secondly, for filling the lacuna according to exigencies of circumstances. The zone of lacuna combines by its nature all kinds of permissible activity. The Head of the State (*waliyyu'l-amr*) has a right to interfere in any of them in the light of the general aim and objective of the Islamic system of economy. We shall give details about this zone of lacuna, its limits and its role in our future discussion. The competencies conferred upon the Head of the State to make interference with and supervision over the movement of production, and determining and „confining it within the limit of the filling of the zone of lacuna left to the State, a part of its right.

Thirdly, the Islamic legislation concerning distribution of raw natural materials (lit., riches) make, by its nature, room for the State, to interfere and supervise the entire economic life since Islamic legislation in this respect makes pulling in of direct labour a basic condition for the appropriation of the natural raw materials and the acquisition of special right according to juristic statement mentioned in some of the previous upper structures of Islamic law, this will mean, by its nature, the impossibility of an individual's establishing a big project for the investment of nature and its raw materials notwithstanding whatsoever of his possibilities of it so long as he does not acquire his right to them by direct labour. So, the process of the production of natural raw materials and mining industries were assigned to be accomplished with the legal authority regulating them to enable through it to establish big enterprises for fruitful exploitation of those wealths and to place them at the service of the Islamic society.

If and when the State's supervision over the mineral industries and the production of primary raw materials were completed then it will have the indirect control over different branches of the process of production in respect of economic life because most probably they will be dependent upon mineral industries and the production of primary raw materials, that it will be possible for the Head of the State to enter various branches indirectly by way of supervision on the first and basic stage of the process of production, that is, the process of the production of the natural materials.

CHAPTER THREE

STATE RESPONSIBILITY IN ISLAMIC ECONOMY

I- SOCIAL SECURITY

Islam has prescribed to the State the duty of providing social security in respect of the standard of living for all the individuals of the Islamic society. The State usually sets about discharge of this important duty in two places. In the first phase, the State furnishes an individual with an opportunity of a generous share of fruitful work, in order that the individual may earn his livelihood with his own labour and effort. However, when an individual is disabled from doing work and earning his livelihood wholly by his own labour, or when in an exceptional circumstances, the State is unable to afford him an opportunity of work, comes the second phase wherein the State pursues the application of the principle of social security by way of making ready availability of an adequate amount of money to defray the expenses of the needs and wants of an individual and to fix a particular limit of his standard of living.

This principle of social security is set up on the two bases of the Islam's doctrine of economics and receives or draws its doctrinal (economic) justification from them both.

The first of these two bases is a public reciprocal responsibility, and the other is, the right of the society to the public resources of the State.

Either of these two bases has its limits and its exigencies in respect of the determination of the kind of wants the satisfaction of which should be guaranteed as well as the fixing of the minimum standard of living which the principle of the social security should afford to the individuals.

The first basis of the guarantee of social security requires a guarantee for no more than the bare necessities of life and over pressing needs and wants of an individual, whilst the second basis of the guarantee of social security adds to that and makes obligatory a guarantee of satisfaction of larger needs and higher standard of life.

It is incumbent upon the State to practise guarantee of social security on both of the bases within the limits of its powers and competencies.

In order to determine the idea of the principle of social security in Islam it is necessary for us to expound both of these bases of it, their exigencies and legal proofs of them.

The First Basis of the Principle of Social Security:

The principle of public reciprocal responsibility is the first basis of the principle of social security. Islam has prescribed it for the Muslims as a *fardu 'l-kifāyah* (a common duty). It constitutes the support of and maintenance of some people by some other people. The support and maintenance of some people by some other people is a duty incumbent upon a Muslim within the bounds of his means and powers. He has to discharge it just as he has to discharge all of his other duties.

The function which the State pursues in respect of this principle of the common reciprocal responsibility of the Muslims, expresses, in fact, the State's role of compelling its subject to comply with what the *sharī'ah* has charged it with and seeing to it that the Muslims of their own abide by the laws of Islam and its capacity as a ruling authority being charged with the application of the laws of Islam and having power to enjoin the do's and prohibits the don'ts of Islam is answerable in respect of its charge and is vested with the right to compel forcibly every individual under its rule to carry out his religious obligations and his compliance with the execution of the task with which Allāh, the Supreme has charged him. Just as it has the right to compel forcibly Muslims to go out on *jihād*, so in the same way it has the right to compel them forcibly to discharge their obligation in respect of the maintenance and support of

the disabled if they refuse to do so. In accordance with this right, it is feasible for it to afford social security to the disabled on behalf of the Muslims and to impose upon them within the bounds of its means and powers to render assistance with a sufficient amount of money towards implementation of this guarantee and to make them discharge their duty and obey the order of Allāh, the Supreme.

In order that we may know the limits of the social security which the State will pursue on the basis of the principle of the common reciprocal responsibility and are kind of wants it will satisfy, we should ask to be shown some of the legal texts which to this principle of the common reciprocal responsibility and to determine in the light of it how much maintenance and support is a duty incumbent upon the Muslims and subsequently the limits of this principle of social security the State will pursue on this basis.

It has come in a sound tradition on the authority of Samā'ah that he asked al-Imām Ja'far ibn Muḥammad (a.s.): "There is a group of people. They have excess (of wealth) while their brethren are in severe needs, and *zakāt* will not suffice them. Can they eat to their fill while their brethren go hungry? The time is hard." "A Muslim is a brother of a Muslim", replied the Imām. "He shall not wrong him, neither shall he abandon him in bad condition, nor deprive him. It is a duty incumbent upon a Muslim to strive after, keep friendly relation, cooperate with each other and be sympathetic to those in need."

In another tradition (it is stated): al-Imām Ja'far aṣ-Ṣādiq (a.s.) said: "Whosoever of the faithful denies a faithful a thing of which he is in need, while he can give it out of what he has, or somebody else has, will arise (from his grave) on the Day of Resurrection, with his face blackened, his eyes blinded, and his hands tied to his neck. Then will be said: 'This man is a dishonest who had committed dishonesty against Allāh and His Messenger.' Then he will be ordered to Hell." His being ordered to Hell, obviously proves that the satisfaction of the need or want of a brother believer is a duty obligatory upon a believer within the limits of his means and capacity because a believer does not enter Hell for omitting what is not obligatory on him, which is his duty to do.

Though here the term '*hājah*' (need, want) in this tradition occurs in a general sense, but in the preceding tradition it occurs in the sense of a severe need, because the charge and guarantee of a collective satisfaction

of a want or need other than severe is not an obligatory duty on the Muslims.

From this it follows that it is a guarantee within the limits of severe needs and wants when Muslims have sufficient provisions in their possession and to spare, then in that case, they cannot, within the term of the first tradition quoted herein above leave their brother in privation, on the contrary it will be obligatory to satisfy his need and afford him the means to relieve him of it.

Islam has linked this guarantee of social security with the general principle of general brotherhood of Muslims in order to show that it is not a superior kind of income tax but a practical expression of the principle of general brotherhood of the Muslims. It proceeds from it by its way of giving the prescription a moral frame agreeing with its conceptions and values, for a man's right to support and maintain by some other man receives its Islamic sense from his brotherly feeling for him and from his feeling of that man's inclusion along with him in the just human family. The State carries out, within the bounds of its means and powers, the protection of this right. The needs the satisfaction of which this right secures are severe needs, severe needs by their nature mean bore necessities needs without the satisfaction of which life would be difficult.

Thus, we know that the social security on the basis of reciprocal responsibility is confined, according to it, within the limits of the basic needs of individuals without the satisfaction of which life would be difficult for them.

The Second Basis of Social Security:

But the State does not derive its justification for the social security, it exercises only from the principle of reciprocal responsibility. On the contrary, it is possible, as we have previously learnt, to show another basis for the social security. It is the right of the society to the sources of wealth. On the basis of this, the State will be directly responsible apart from the obligatory support and maintenance by the Muslims themselves, for the livelihood of the needy and helpless.

We shall firstly talk about the State's direct responsibility of social security and its limits according to the legislative texts and then we will

talk about the theoretical basis in which the idea of this security is centered, that is, the right of the society to the natural wealth.

As for the direct responsibility of social security, the terms of this responsibility differ from the responsibility which the State exercises on the basis of the principle of reciprocal common responsibility because this does not impose upon the State the duty of the security of the individual's within the limits of his basic needs only but impose upon it the duty of securing to the individual's means of life in keeping with the standard of life the individuals in Islamic society are living, since here the security is a security of upkeep, and upkeep means affording an individual means in keeping with the standard of living and lending help to his maintenance of it. Here the term 'maintenance' is used in its popular senses, the implication of which, whenever the Muslim society's general standard of living increases comfort and ease, go with it. So, on this basis it is incumbent upon the State to satisfy an individual's basic needs such as: food, shelter and clothes, and its satisfaction of these needs will be on the side of kind and quantity in keeping with the standard of living according to the circumstances of the Muslim society. Likewise, it is incumbent upon the State to satisfy all the needs of an individual other than his basic needs, needs which enter into the Islamic sense of upkeep according to the extent of the elevation of the Islamic society's standard of living.

The legislative texts, pointing to the State's direct responsibility as to the social security are quite clear in their emphasis on this responsibility and on the fact that this security is a security of upkeep, that is, a security of affording the means of the upkeep to live upto the standard of individual members of the Islamic society are living.

There is a tradition reported on the authority of al-Imām Ja'far aṣ-Ṣādiq (a.s.) that: "The Messenger of Allāh (*s.a.w.a.*) used to say in his sermon 'Whosoever leaves behind him his loss, his loss is my responsibility and whosoever leaves debt behind him his debt is my responsibility and whosoever leaves his money it is his food.' "

In another tradition, it is stated that al-Imām Mūsā ibn Ja'far (a.s.) said, defaming what is due to him and what is due from him: "He is the heir of one who leaves no heir behind him, and he maintains one who has no means to maintain himself."

In a report of Mūsā ibn Bakr (it is stated) that al-Imām Mūsā (a.s.)

told him that one who seeks sustenance by lawful means in order to benefit himself and his family and children is *a mujāhid* in the cause of Allāh. Then, if he fails in that let him seek to borrow in the name of Allāh and His Messenger (*s.a.w.a.*) whatever he needs to feed his family and children. Then, if he dies without discharging his debt then it will be the responsibility of the Imām to discharge it. Then, if the Imām does not discharge it, upon him will be the burden of it. Allāh, the Mighty, the Glorious says: *The ṣadaqah are for the poor, the needy, those who work on* (collecting them) . . . (9:60); he is a beggar, a destitute, a debtor! ¹

It has come in a letter of al-Imām ‘Alī (a.s.) to the Governor of Egypt: “Thereafter for the sake of Allāh take care of those from among the poor and the needy, the miserable and the crippled who have no means to support themselves. They are a class of contended and courageous people. Allot for them a share out of your *baytu ‘l-māl* and a share of Islam’s best crops from every city, for the farthest removed of them is like that which is for the nearest of them. You should surely call to your attention to the right of everyone of them, pride should not divert your attention from them. Indeed, you will not make lame excuse of loss of a trifle for your numerous important orders. Do not leave off your care of them nor turn away your face in disdain from them.

“Then from among them who cannot reach you, he from whom eyes are swiftly turned away, he whom people hold in contempt and whose matters you missed let you employ your trustworthy man of Godly fear and humility to devote themselves to such a one of them and let them

¹ The Imām’s quotation of this holy verse would not mean encompassing the Head of State’s responsibility about maintenance and the disbursement (of it) with a specific source of *baytu ‘l-māl*’s (Public Treasury) revenue, namely, *zakāt*. This is because, the verse is not particularly for the *zakāt*, but lays down a general rule concerning *ṣadaqah* of all classes. The verse therefore includes the money which the State gives to the help-less and needy for it is also a variety of *ṣadaqah*. Add to this that it is not incumbent upon the Head of the State to spread out the *zakāt* to the eight categories mentioned in the verse under quotation, on the contrary, it is permissible for him to spend it over some of its categories along with the text of the tradition reported by Mūsā; ibn Bakr, affirms that if the Head of the State did not discharge the debt of the man, it will be a heavy burden upon him, and this is a special responsibility concerning security.

bring before you their matters, then act in respect of them in a way that it will constitute your plea to Allāh on the Day you will confront Him for these from among those under your rule and more in need of justice than others. Look after the orphans, and the one enfeebled by age who has neither the ability nor can toil for their own problems.”

These texts enunciate quite clearly the principle of social security, expound the responsibility of the State for the maintenance of an individual and provide him with the means of its maintenance.

It is this principle of social security for the application and the pursuit of which in the Islamic society, the State is considered directly responsible.

As for the theoretical basis on which the idea of the security of this principle, the belief of Islam in the right of the society to the whole of the resources of wealths possibly constitute it for all these natural resources have been created for the society as a whole not for a group of people versus another group (. . . *Who created for you all that is in the earth*, 2:29). This right means that every individual of the society has a right to the benefit of the natural wealths and to an honourable life therefrom. So any one who is capable of working on any of the sectors for public or private, it will constitute a function of the State to afford him an opportunity. within the bounds of its ability, an opportunity of work, and he who cannot afford this opportunity of work or is unable to utilize the opportunity, then availing of the benefit of the natural wealths by providing him with the means of his upkeep to an honourable standard of life, will be the responsibility of the State.

So the State's direct responsibility in respect of social security rests upon the basis of the common right of the society to the natural wealths and constitutes a proof of the right of the such of the individuals of the society who are incapable of work.

As for the mode which the economic doctrine adopts to enabling the State affording security of this right and protection of it for the entire society including the disabled, it is the creation of some public sectors of Islamic economics. These sectors are fashioned from the resources of public and the State property in order that these sectors may constitute on the rank (footing) of *zakāt* – a security of the right of the weak, a barrier against the strong people's monopolization of the entire wealth, the State balance on hand assisting with expenditure for the carrying out of the

social security and affording every individual the right to an honourable means of living from the natural wealths. So, the basis in the light of this, is that it is the right of the entire society to benefit from the natural wealth.

And the idea (of social security) which rests upon this basis in the basis of the State's direct responsibility of affording to all the individuals of the society, the helpless and the destitute, security of the means for the maintenance of an adequate standard of honourable life.

While the doctrinal mode of the implementation of this idea is the mode of public sector which the Islamic economics has created, as a security for the full realization of all aims of this idea.

And the most striking legislative text about the declaration of the basis of all of the economic doctrinal content, the idea, the mode, is about the Qur'ānic intersection in *sūrat al-Ḥaṣhr*. The relative verse of the *sūrah* specifies the function of “*fay*’ “ and its part in the Islamic society in its capacity of public sector. Here is the text:

What Allāh has granted to His Apostle as a fay’ from them while you did not run a horse or camel, but Allāh gives His dominance over whom He wishes and Allāh is All-powerful. And what Allāh has granted His Apostle as a fay’ from the property of the people of the town belongs to Allāh, to His Apostle, to his (Apostle’s) family, to the orphans to the traveller, so that it may not be a thing taken by turns among the rich of you . . . (59:7).

In this verse we find the declaration of the basis on which the idea of social security is established, that is, the basis of the right of the whole of the society to the wealth. (*So that it may not be a thing taken by turns among the rich of you.*) The verse explains the legislation of the public sector of the *fay*’. It fashions a mode of the security of this right. It forbids monopolization of the wealth by some people, it lays emphasis, the necessity of subjugating the public sector to the good and benefit of the orphans, the poor and the wayfarer in order that all the individuals of the society succeed in obtaining their right to enjoy the benefit of nature which Allāh has created for the use and service of man.¹

¹ There are some traditions which differ from that in the explanation of the verse, like the tradition which speaks of the revelation of the two verses in respect of two different subject matters. It speaks of the first

So the basis, the idea and the mode, all of them are obvious in this Qur'ānic light.

Some of the jurists like ash-Shaykh al-Ḥurr have given their legal opinion, that the State's vouchsafe of the social security is not particularly for the Muslims but even for a *dhimmī* (a non-Muslim subject) who lives under the protection and shelter of the Islamic State, grows old and is unable to earn his livelihood, will obtain the means of his maintenance from the *baytu 'l-māl* ash-Shaykh al-Ḥurr has quoted a tradition on the authority of al-Imām 'Alī (a.s.) that he passed by an old man who was begging where upon Amīr al-mu'minīn (a.s.) asked: "What is this?" He was told that the beggar was a Christian. The Imām said: "You sought to make use of him until when he grew old and is unable to work, you deny him his means of sustenance. Give him his maintenance money from the *baytu 'l-māl*."

verse, that it is about the *fay'* and of the second verse that it is about the *ghanimah* (booty) or about the *khums* of the *ghanimah*. But these traditions are of weak authority as appeared from the following chain of narrators. It is, therefore, necessary for us to explain the two verses in the light of their appearance. The appearance of both of them in the talk is about one subject matter, that is about *fay'*. The first verse negates the right of the fighters to the *fay'* for it is what is acquired without fighting and the second verse specifies the place of the use of *fay'*, that is, the directions in which the *fay'* is spent. Evidently, the poor, the wayfarers and the orphans being the object of spending the *fay'* does not negate its being a property of the Prophet or the Imam by virtue of his position, as the sound traditions have pointed out to that.

The sum and substance of those traditions after looking at the verse along with them amounts to this. The *fay'* is the property of the position which the Prophet or the Imām occupies, and the place in which it is incumbent upon him to spend the *fay'* is a thing which comes within the orbit of the two headings which are mentioned in the verse, namely, the interest that have to do with Allāh, the Prophet, his family, the poor, the wayfarer and the orphans. By the specification of the place of expenditure in accordance with the verse it is the generality of his statement. (He may put to use where he wishes) as is in the tradition of az-Zurārah. The Imām may put it to use wherever he may wish, within the orbit of the limits the holy verse specifies.

II- SOCIAL BALANCE

When treating of the matter of social balance, Islam proceeded from two truths, one cosmical, and the other doctrinal in order to formulate a principle of the State's economic policy for it.

As for the cosmical truth, it is the difference which exists between individual members of the human species as to their diverse mental intellectual and physical faculties and aptitudes. They differ as to their endurance and fortitude and their power of will and hope. They differ as to the keenness of their wit and the promptitude of their intuition and as to their ability of originality and invention. They differ as to the strength of their sinews and stamina of their nerves and such other sustenance of human personality.

These incompatibilities are not, in the opinion of Islam resultant from accidental occurrences of man's history as is presumed by fond lovers of the economic factor who attempt to find in it the final cause of every phenomenon of human history. The attempt at the explanation of these incompatibilities and differences on the basis of a particular social circumstances, or a specific economic factor is a mistake. If it were possible to explain a state or condition of a society in the light of it as a whole and it can be said that a feudal order of society a slave system was begotten of an economic factor, as the supporters of material explanation of history, then it will not constitute in any circumstance a sufficient

explanation of the appearance of those specific incompatibilities and differences between individuals unless the question as to why this man adopts the role of the slave, and that man the role of the lord, the master, or the question as to why that man happens to become keen-witted capable of creating new things and that man happens to become dull-witted, incapable of creating anything new, or the question as to why these two individuals interchange their respective role within the framework of a general order.

The answer to the question can only be made by assuming the individuals are diverse as to their specific endowments and their potentialities, before every social difference between them in the class order of the society; in order to explain the difference between individuals in the class order and the designation of every individual to a particular role in this order, on the basis of difference as regards their natural gifts and potentialities; so it will be a wrong statement to say that this man happens to be keen-witted because he occupies the role of the lord in the class order and that man dull-witted because he plays the role of the slave in that order, because in order that this man occupies the role of the slave and that man attains to the role of the lord, the existence of a differential between them to enable the lord to make the slave content with the distribution of the roles in the form is indispensable. Thus, we are led in the end to the positive conclusion of assigning the cause to the natural psychological factors whence the personal differences between individuals as regards their peculiarities and aptitudes.

Hence, the difference between individuals in an absolute truth and not the product of a social framework. So, it is neither possible for a realist theory to disregard it, nor for the social order to abolish it by legislation or by the process of an alteration of the nature of social relationship.

This is the first truth.

As for the second truth of the Islamic logic for the treatment of the matter of social balance, it is the (economic) doctrinal law of distribution that it is work which is the basis of private property and of whatsoever of rights to it. We have come across this law and we have studied every detail of its doctrinal contents in the discussions of it.

Now let us combine these two truths in order to know, how Islam proceeded from both of these two truths, for the sake of the treatment of the matter of social balance. Indulgence towards the appearance of the

difference in wealth is the outcome of Islam's belief in these two truths. Let us assume, for example, a group of people settle down on a land, develop it economically and grow on it as a society establishing their relationship with each other on the basis that work will be the sources of ownership and on the basis that none of them will practise any kind of the exploitation of the other ... We will then find after a while differing in respect of their wealth according to as regards their intellectual, spiritual and physical makings. These differences Islam admits because they are begotten of the two truths in both of which it believes at the same time and it sees no danger from such a difference coming into conflict with social balance. It is on this basis that Islam prescribes that the social balance should be understood in terms of the acknowledgement of these two truths.

From that Islam educes the statement to the effect that the social balance would be a balance of the standard of living and not in a balance of income among the individual members of the society; and the meaning of the standard is that the money should be present with and circulate among the people in a degree as would afford each individual member of the society a common standard of life, that is, every individual member of the society is afforded to enjoy living on a single standard of life with the preservation of the degree according to which means of living differ within a single standard of life. But it would be a difference of degree, of the standard of living and not a difference of contradictory standards of living like the vociferous contradictory standards existing in capitalist society.

This does not mean that Islam enjoins to create this state in a moment but appoints social balance of the standard of living an aim and objective which the State should strive best, within the bounds of the means at its disposal and its capacity, to implement and achieve it with different legal modes and methods within the means it enjoys.

Islam accomplishes this aim, by putting pressure, from above on higher standard of life with prohibition of extravagance and by putting pressure with the upliftment of the people living a lower standard of life from a lower to a higher standard of life. With that different standards are brought closer to each other till they are incorporated into a single standard. It does contain certain degrees of differences in standards but does not comprise of crying capitalist contradictory standards of living.

We have learnt that Islamic principle of social balance is based upon a minute examination of the Islamic texts – an examination which will make revelation concerning the belief of these texts in the social balance as an aim, also, concerning its giving the very content of this aim which we have expounded, as well as concerning their emphasis on the direction of the State as to the upliftment of the standard of life of the individuals of the society living on lower standard of life, to strive almost on an equal footing with one another.

It has come in the tradition that al-Imām Mūsā ibn Ja‘far (a.s.) mentions concerning specification of the responsibility of the Governor of the State as regards *zakāt*.

“The Governor should exact the *zakāt* and meet the purpose Allāh has directed him according to eight categories of the poor and the indigent. He should dispense it to them in their annuities of such amount as would render them dispense with their needs without difficulty and without dread. After that if there remains any left over as surplus, it will revert to the Governor. But if there is any shortage of it, and the amount of *zakāt* is insufficient to meet their needs then the Governor would make up the shortage by providing out of funds with him an amount which would do to render them dispense their needs.”

This text specifies explicitly that the aim and objective which Islam tries to realize is to render every individual member of the society prosperous.

This is what we find from the words of ash-Shaybānī according to what has been narrated on his authority by ash-Shamsu ‘d-Dīn as-Sarkhasī, in *al-Mabsūt*. He says: “A Governor should have fear of Allāh in spending monies of Allāh in their proper place. It is not for him to leave off a needy man without giving him his rightful share out of *ṣadaqah* as much amount as would suffice himself and his family. In case some Muslims are in need, and there is nothing left in *baytu ‘l-māl* of *ṣadaqāt*, then the Governor should give out of the *kharaj* (land-tax) in *baytu ‘l-māl* what they are in need of. It will not constitute a debt on *ṣadaqāt* of *baytu ‘l-māl*, because as explained by us, *kharaj* and whatever revenue comes within its meaning is for the use towards needs of the Muslims.”

So, the prevalence of prosperity is the aim which the texts place before the Imām of the Head of the State. Now, in order to know the

Islamic conception of prosperity we should specify that also in the light of these texts. When we refer to them we will find that the texts have appointed an end limit of prosperity for giving *zakāt*. It has permitted giving *zakāt* to a poor till he becomes prosperous and forbidden giving it to him after that as has come in a report of tradition on the authority of al-Imām Ja‘far aṣ-Ṣādiq (a.s.): “You may give to him *zakāt* till you make him prosperous.” So the prosperity, the abundance of which Islam aims at for all the members of the society is the prosperity which is made a line of demarcation between giving and not giving of *zakāt*.

We should again refer to the texts and search for the nature of this line of demarcation between giving and not giving of the *zakāt*, to know the meaning of “*al-ghaniyy*” in Islam.

At this stage of deduction it is possible to make a discovery about the nature of that line in the light of the tradition of Abū Baṣīr in which it has come that: “he asked al-Imām Ja‘far aṣ-Ṣādiq (a.s.) about a man having in his possession eight hundred dirham, the man, a shoe-maker, with a big family, as to whether it is valid for him to take any *zakāt*.” The Imām replied : “O Abū Muḥammad! does he make any saving out of the dirham with which he maintains his family?” “Yes”, replied Abū Muḥammad. “If he saves half of the amount with which he supports his family”, said the Imām “then he should not take *zakāt*. But if it is less than half, then in that case he may take *zakāt*. And whatever amount of *zakāt* he takes he may contribute towards the upkeep of his family so as to join them (on level) with people.”

In the light of this, prosperity of Islam would be a man’s enjoying as much of the means of spending upon himself and his family as would join him to the common people and means of living his life coming to be, on an equal footing with the mutually recognized standard of life wherein there is no difficulty and no dread.

In this manner, we will come out from a chain of conceptions to Islam’s conception concerning social balance and will know that when Islam formulated the principle of social balance and made the Head of the State (*waliyyu ’l-amr*) responsible to implement it by legal methods, expounded its idea concerning it and made it plain that it will be attained factually by the increase of prosperity of all the individuals. The *sharī‘ah* has employed this conception of prosperity to fix a line of demarcation between the permissibility and impermissibility of *zakāt* and has

explained by other texts this line of demarcation as that degree of an individual person's prosperous circumstances of life which will join him with the people's standard of life. With that the tradition has given us the Islamic conception of prosperity which gives us the information concerning the principle of social balance, that it is directed towards the aim of the increase of prosperity of all the people and regards the prevalence of it as a basic condition of the realization of the social balance. In this manner will be completed in our brain a clear cut Islamic picture of the principle of social balance and we will know that the aim laid down for the Head of the State is the business of joining backward individuals with a higher standard of life in the direction which will make certain a general comfortable standard of life.

Just as Islam has formulated the principle of social balance it has taken upon its hand to furnish the State with the requisite powers in order that it may exercise them for the application of the principle of social balance in terms of these powers.

An essence of these powers can be given concerning the following matters:-

Firstly: Imposition of continuously recovering permanent taxes to expend them as regards the purpose of social balance.

Secondly: Obtaining the sectors of the State property and the State's turning to profitable investment of these sectors for the purpose of social balance.

Thirdly: The nature of Islamic legislative enactments which regulates diverse fields of economic life.

1. Imposition of Permanent Taxes:

These taxes are *zakāt* and *khums* These two fiscal duties were not planned for the sake of the satisfaction of basic needs only but also planned for the treatment of poverty and for the raising of the standard of life on which the poor live to the standard of the life which the rich pursue in order to realize the social balance as conceived by Islam.

The following texts are juridical proofs of these imports. Bearing to the objects and purposes of the social balance and the State's power and ability of the employment of them to that end.

a) On the authority of Ishāq ibn 'Ammār. He says: "I asked al-

Imām Ja‘far aş-Şādiq (a.s.) if I may give a man one hundred dīnār out of the amount of *zakāt* due from me. The Imām said: ‘Yes.’ I then asked: ‘Two hundred.’ He said: ‘Yes.’ I asked: ‘Three hundred.’ He said: ‘Yes.’ I asked: ‘Four hundred.’ He said: ‘Yes.’ I asked: ‘Five hundred.’ He said: ‘Yes,’ . till he becomes self-sufficient.’ “

b) On the authority of ‘Abdu ’r-Raḥmān ibn Ḥajjāj. He said: “I asked al-Imām Mūsā ibn Ja‘far (a.s.) about a man whose father, uncle and brother used to supply with provisions to meet his needs, as to whether, in case they were not able to supply all the things, can he take *zakāt* and enable himself to meet his needs?” The Imām replied:” There is no objection.”

c) On the authority of Samā‘ah. He says: “I asked al-Imām Ja‘far ibn Muḥammad (a.s.), ‘is taking of *zakāt* valid for a person possessing a house and a servant?’ The Imām replied: ‘Yes’.”

d) It is reported by Abū Baṣīr speaking about a person on whom *zakāt* is obligatory but he is not well off in life. The Imām said: “He must be helped in feeding and clothing of his family and children; he may retain something from it and give it to other and he may share with his children whatever of the *zakāt* he takes till he joins them to the people (as to the standard of life).”

e) On the authority of Ishāq ibn ‘Ammār, he said,” I asked al-Imām Ja‘far aş-Şādiq (a.s.): ‘May I give to a man eighty dirham from *zakāt* ? ’ He said: ‘Yes, and give him even more. ’ I said: ‘May I give him one hundred?’ He said:¹ ‘Yes, and make him self-sufficient if you can do so.’ “

f) On the authority of Mu‘āwiyah ibn Wahab, he said, “I asked al-Imām Ja‘far aş-Şādiq (a.s.): ‘It is narrated on the authority of the Prophet that giving of *sadaqah* to the well-to-do is not valid, nor equally to persons of good means.’ The Imām said: ‘Yes, it is not valid for the well-to-do people.’ “

g) On the authority of Abū Baṣīr, he said, “I asked al-Imām Ja‘far aş-Şādiq (a.s.): ‘An old man from among our companion, called ‘Umar, a needy man, begged ‘Īsā ibn A‘yan for something. ‘Īsā ibn A‘yan told

¹ It may be remarked here that the purchasing power of the dirhams in the days of these texts was greater than the purchasing power of the currency coins to which we apply in these days that name.

him, "I have *zakāt* money with me, but I will not give you anything from it, for I saw you purchasing meat and dates." 'Umar told him: "I gained only one dirham out of two *danīqs* therefrom. I purchased meat and with two *danīqs*, I purchased dates and was left with two *danīqs* for my need . . ." (The narration reports that when the Imām heard this story of 'Umar and 'Īsā ibn A'yan, he put his hands on his forehead for a while, then lifted his head) and said: 'Allāh the Supreme has looked into the monies of the rich. Thereafter, he has looked into the State of the poor and then fixed *zakāt* (poor-tax) such sum of the monies of the self-sufficient as they would be satisfied with and if that were not to suffice them, make it more for them. Nay! a self-sufficient men should give a poor men such sum of money as would enable him to eat, drink, cloth himself, marry, give *ṣadaqah* and perform the *ḥajj*.' ¹

h) On the authority of Ḥammād ibn 'Īsā: That al-Imām Mūsā ibn Ja'far (a.s.) said, while he was speaking about the share of the orphans, the needy (*miskīn*) and the wayfarer in the *khums* – the governor shall dispense it among them according to the Book (al-Qur'ān) and the *sunnah* such amount annuities as would enable them to dispense with their needs. After that if there is any surplus left, it will belong to the governor. However, in case he is unable or the *khums* falls short of sufficing them for their yearly needs, then he is liable to give them, out of the money he has with him, such amount as would render them self-sufficient.

These texts enjoin giving as much out of *zakāt* and such other money, as would enable an individual to join to the standard of the people or as far as he would enable him to become self-sufficient or according to different wordings which occur in the texts giving to them such amount as would be sufficient for their primary and secondary requirement such as: food, drink, clothing, marriage, *ṣadaqah* and *ḥajj*. Every one of these are directed to one subject, the bringing about of the prevalence of self-sufficiency according to Islamic conception of it at all levels of living

¹ The preferred opinion concerning the understanding of these texts is that they are directed to the aim of allowing the dispensation of *zakāt* in terms they assign to a man in his capacity of a poor man not on the basis of the application of the categories of persons in giving it in the way of Allāh and to that we can give the Islamic conception of a poor man.

standards.

In the light of this, we can limit generally the conception of self-sufficiency and poverty according to Islam. According to it a *faqīr* (poor) is one who has not his satisfaction of his requisite and supernumerary wants as far as the wealth of the country would allow him; in other words, one who lives at a standard, the deep chasms of which separates him from the standard of the well-to-do individuals of Islamic society, and the self-sufficient (the rich) is he whose living standard such a chasm neither separates him from it nor makes, satisfaction of his requisite and supernumerary wants proportionate to the wealth and the material advancement of the country, difficult for him irrespective as to whether he possesses great wealth or not.

From this, we learn that Islam has not accorded an absolute sense and fixed implication to all cases and circumstances of poverty. For instance, it cannot be held that inability of satisfying simple basic need constitutes poverty. But it has rendered manner of living not of reaching upto the living standard of people a meaning of poverty and the actual purport of poverty will be enlarged commensurate with what raises the standard of living, for, in such a case, lagging behind the pace of this rise of the standard of living would constitute poverty, if, for instance, people are accustomed to have an independent house of their own as a result of the expansion of civilization and the flourishing condition of the country a family's not having an independent house of their own in that country would constitute a kind of poverty while in a country which has not reached such a standard of ease and comfort of life, a family's want of an independent house of its own would not constitute to be poverty.

This elasticity of the implication of conception of poverty has a bearing on the idea of social balance, since if it were to offer, instead of that, an invariably fixed import of poverty, an inability as to the satisfaction of simple basic needs, and to make treatment of fixed implication of poverty function of *zakāt*, etc. the act of the creation of the social balance through it would not be possible nor it would be able to bridge the chasm between the living standard of the beneficiaries of *zakāt* and the general living standard of the self-sufficient people which goes on marching forward, slowly and rising continuously following changes in civic life and the overall increase of wealth of the country. So, the rendering of the elastic implication of poverty and self-sufficiency

and placing the institution of *zakāt*, etc., on the basis of this elastic implication with the power of the employment of *zakāt*, etc., is guarantee for the good of the general social balance.

Offering an elastic import is neither extraneous to a purport with which the prescription of the law is connected such as elastic import of poverty, to which *zakāt* is linked nor will this mean alteration of the prescription of the law, but will mean an alteration in the presently existing meaning of this implication.

The science of medicine is an illustrative example of it. Law has ordained learning of medicine as '*kifāyah*' duty of the Muslims. This duty is a permanent ordinance connected with a specific import, namely medicine. But what is the import of medicine? What does learning of medicine mean? Learning of medicine means, a study of special information which fulfils, in any circumstance, the condition as regards knowledge of disease and the method of their treatment. These special information will increase with the passage of time in accordance with the evolution of knowledge and the perfection of experience. Then those information which constituted special information yesterday will not be deemed special information today and it will not be sufficient for a physician of today that he has mastered what the expert physician of the age of the prophethood knew to constitute in compliance with the ordinance of Allāh in regard to medicine. Hence, the elasticity of the import of medicine is not a change of the ordinance of law and if the physician of today is different from a physician of the age of the prophethood, then, it is reasonable for the import (implied sense) of poor man today also, to be different from the import of a poor men of the age of the prophethood.

2. Creation of Public Sectors:

Islam has not been content with permanent taxes which it has planned for the seeking of the creation of the social balance but has rendered the State responsible for the disbursement of public sector towards this object. It has come in the tradition on the authority of al-Imām Mūsā Kāẓim (a.s.) that the Governor, in case of the insufficiency of *zakāt* is liable to provide them out of what he has with him as much as would do them till they become self-sufficient.

The phrase ‘out of’ what he has with him, proves that he can employ sources of *baytu ’l--māl* (public treasury) other than *zakāt* towards the cause of the creation of the social balance by the enriching of the poor and the raising of standard of their living.

The glorious Qur’ān has expounded the part of *fay’* which is one of the sources of the revenue of the *baytu ’l--māl*. It says: *What Allāh has bestowed upon His Messenger by way of fay’ from the towns’ people belongs to Him, to His Messenger, to the kinsmen, to the orphans, to the needy and to the wayfarer, so that circulation of wealth may not become confined in the hands of the wealthy amongst them.* (59:7)

We have already learnt that this sacred verse speaks about the object of the use of *fay’* and puts the orphans, the needy and the wayfarer on a rank with Allāh, His Messenger and the kinsmen. This means that the *fay’* is provided for disbursement of a part of it on the poor just as it is provided for a disbursement of a part of it upon the common good connected with Allāh and His Messenger. The verse clearly indicates that the provision of *fay’* for the disbursement of a part of it upon the poor has for its aim rendering the money to be in common use and to be found in possession of all individuals of the society and not be circulating among the wealthy, especially to safeguard the common social balance.

Fay’ constitutes, in fact, what the Muslims have acquired by way of booty from the unbelievers without fighting. It constitutes a State property, that is, it belongs to the Prophet or the Imām in consideration of their position. Therefore, *fay’* is regarded as a class of *anfāl* (booty – spoils of war). They are the properties which Allāh has rendered the property of the Prophet and the Imām in consideration of their position, such as waste lands or mines according to a saying.

The term *fay’* is generally applied in legal technical terms to *anfāl* on the evidence of what is stated in the tradition. of Muḥammad ibn Muslim on the authority of al-Imām al-Bāqir (a.s.). He says: “*Fay’* and *anfāl* constitute of a land in the acquirement of which there has been no bloodshed or whatever of the land has been acquired from a people that has made peace or what has been given with their own hand as well as the neglected waste lands, and the bowels of the earth (mines). All these constitute *fay’* This text makes clear about the application of the terms *fay’* to whatever of the other kinds of properties Muslims have come into possession by way of *anfāl* (spoil of war) and in the light of

this legal technical term will not be made special for booty obtained without fight to be an expression as regards all the sectors which come into possession ex-officio of the Prophet or the Imām as administrators.¹

On this basis, we can conclude that the verse has confirmed the order of *anfāl* in a general form under the name *fay'* and by this we learn that in the *sharī'ah*, *anfāl* is used to safeguard the balance and responsible of the circulation of the wealth among all, as it is used for the common good.

3. Nature of Islamic Legislation:

Thereafter, social balance in the Islamic society is indebted to the collection of Islamic juristic regulations in different fields for which are divided in the State application for the safeguard of the balance.

We cannot take up here the collection of all the juristic regulations having their bearing on social balance and show the relationship between it and them. But we can adequately refer to Islam's campaign against hoarding of cash wealth, abolishing usury, enactment of the laws of inheritance, bestowal of powers upon the State concerning abandoned lands withholding of the usufruct of the wealth for raw materials and so forth.

Now, Islam's ban on hoarding and the abolishment of usury penalizes the role of the capitalist banking houses in creating disparity of social stratum and disturbance of social balance and deprive them of their power of prowling after the lion's share of the country's wealth, a business which they manage through the encouragement to hoarding and the enticement to interest of the common people.

So, from the Islamic stand will result, of course, most likely the disability of the individual (private) capital's capacity of the expansion of the fields of productive operation and commerce. Now, as the individual's capacity expansion of industrial and commercial projects in countries like capitalist countries depends upon the capitalist banking houses which help them as to their needs of finance with loans at a certain rate of interest. So, when hoarding is banned and the taking of

¹ We must add to that, that this verse, according to common under-standing, is general and not particular.

interest is made unlawful by statute law, it will neither be possible for the banking houses to keep up money in their treasuries, in the shape of huge piles nor to help individual enterprises with loans. Hence, the private activities will keep within reasonable bounds in keeping with general balance and leave, naturally, the working of big projects to public properties.

The enactment of the laws of inheritance, according to which the property left by the deceased will most likely be distributed among a number of heirs, his kinsmen, is another security of social balance, since the distribution of such properties among the deceased's kinsmen accordingly as laid down in these laws will lead to the continuous breaking up of these properties and will act as a check on their accumulation. So, at the end of every generation the collective number of the new heirs will most likely reach double the collective number of their erstwhile owners.

The powers conferred upon the State for filling up the zone of lacuna left in the statute laws is also a security for the social balance as we shall find in our coming talk.

Likewise, the abolishment of the productive development of the natural raw wealths, which represents the position of the starting point for the economic activity, leads to social balance since it is the employment of the natural wealth which is the main starting point of economic activity.

Now, immediacy were posed (laid down) as a condition for the acquiring of the ownership of raw wealth obtained from nature, as opined by some jurists, and exploitation of others to that purpose be banned, the distributions of these wealth will have already been sharpened to the shape confirming social balance and a small number of persons would have been disallowed to exploit to service in this sphere, a matter which casts seeds of contradiction and disturbance and blast the social balance at the very beginning.

* * * * *

THE PRINCIPLE OF THE STATE'S INTERVENTION

The all comprehensive and universally general power and authority which are given to the State for intervention in economic life of the community will be deemed one of the fundamentally important principles of Islamic economic system.

The State's intervention is restricted to the mere adaptation of static (permanently fixed) dicta of the statutory laws of Islam but extends to the filling of the zone of the lacuna in the Islam's statute laws, for on the one side it intervenes to urge upon the community adaptation of the static elements of the statute laws, on the other side it devises the dynamic elements, as regards the Islamic legislation, according to circumstances.

In the practical sphere, the State will intervene in economic life to guarantee the adaptation of those dicta of Islamic law which are connected with the economic life of the individual persons, for instance, it puts a check upon people's transacting business with interest (usury) or acquiring authority over land without reclaiming it. Likewise, it carries out itself the dicta with which it is directly concerned, for instance, it implements the principle of social security and general social balance in accordance with the way Islam has permitted for the realization of those principles.

In the legislative sphere, the State will intervene to fill up the lacuna zone (gap) which the Islamic enactment of laws has left to it so that it fill up according to changing circumstances in the form which will guarantee the general aims of Islamic system of economy and will realize the Islamic picture (shape) of social justice.

At the very early part of our discussion we have referred to this lacuna zone and have learnt that the study and examination of it is necessary during the process of discovery since it enters into the picture we are seeking to discover as the picture's dynamic element which gives it the ability as to the performance of its mission and the union of its life on the practical and theoretical plane, in diverse ages.

Why was Lacuna Kept?:

The idea of this zone of lacuna stands on the basis that Islam does not offer its principle of legislative enactment of the laws of economic life as a fixed treatment or a phase (stage by stage) system which history transmits it through interval of ages, from forms to forms to a last and final form of the system. But offers it as a theoretical form suitable for all ages. It is, therefore, essentially necessary to give this form completeness and comprehensiveness wherein to reflect changes of ages, inside the dynamic element, assisting the form with capacity to adaptation in accordance with diverse circumstances.

To take up the details of this idea, it is necessary for us to determine the changing aspect of the economic man's life and the extent of his influence in the form of the legislative enactment which regulates that life.

Now, here in the economic life there are man's relationship with nature – the wealth – which are exemplified in his mode of their production, and his control over them (the modes and man's relations) with man, his brother which are reflected in the rights and privileges which this or that man has acquired.

The differentia between these two kinds of relationships the first kind of the relation which man pursues irrespective of whether he lives in society or apart from it. In other case, he is entangled with nature in a clearly defined relationship limited to his experience and knowledge. He chases the birds, tills the land, extracts the coal and spins the wool with

modes at which he is good. The establishment of these relationships between man and nature does not depend by their nature on man's existence inside society but society influences these relationships. It leads to pooling together of various experiences and information and to the growth of the human level of acquaintance with nature and the man's capacity of needs and desires.

As for man's relationships with man, which are determined by rights and privileges and obligations depend by their nature upon man's existence inside a society. So, unless a man does not live in society, he does not proceed towards fixing his rights and his duties. The right of a man to the land he reclaims to productive use, and depriving of him of the right of acquiring gain through interest (usury) or compelling of him to allow others for the satisfaction of their requirement of water from a well he has opened up, if there is any surplus after meeting his requirements, all these relationship have no meaning except under the umbrella of the society.

Islam, as we picture (conceive) it, distinguishes between these two species (classes, categories) of relationship. It is of the opinion that the relationship which holds between man and nature or natural wealth change with the passage of time, following from the problem which man confronts continuously, in the course of his pursuit of nature and the variegated solutions by which he gains mastery over these problems. As often as changes his relationship with nature increases his control over it and his power as to his means and modes increase.

As for man's relations with his brother, they are by their nature unchangeable for they treat the problems essential and permanent, no matter what disagreement there may be as to their frame and their external appearance. Every society which, in the course of its relationship with nature, gains control over its wealth, will be confronted with the problem of its distribution and determination of the rights of the individuals and society in respect of equality when its operation of production is at the steam level and electricity or at the level of hand-mill.

On account of this, Islam considers that the laws which regulate these relations in conformity with social justice, are from theoretical side capable of duration and permanency for they treat permanent problems as the law enacting principle which says, for instance, that the special right

to the resources of nature is established upon the basis of labour, treats of the general problem which is alike and same in the age of the simple plough and in the age of complicated tools because the method of the distribution is a standing problem of both the ages.

Islam disagrees as to this with Marxism which believes doctrinally that man's relation with man, his brother changes in accordance with the change of his relation with nature and links the form of distribution with the mode of production. It refuses the possibility of the discussion of the problems of the society except in the frame of its relationship with nature as we have come across to our presentation of it and our criticism of it in the first volume of the present book (*Iqtiṣādunā*).

It is, therefore, but natural, on this basis, for Islam to offer its principle of theory and law which is, as such, capable of regulating the relationships of man with man in diverse ages. But this will not mean a point for omission of proper attention to the changing side, that is, the relationship of man with nature and cast it out of reckoning. Since as much as the development of man's power over nature and the growth of his control on its wealth will elaborate or become bigger or more systematic, so much man's danger to society will go on increasing and it will place at his service and disposal new possibilities for expansion and for the destruction of the form adopted for the social justice.

For instance, the juridical principle, which says that the man who expends earnest and hard labour on a piece of land till it is made fit for productive use for renewed cultivation is more en-titled to have it than any other person is considered in the eye of Islam a just principle because it is an injustice to put on an equal footing the worker who expends his efforts on a piece of land and another man who has done no labour on it. But this principle with man's power over nature and its development becoming collaborate fuller and more systematic may become his power of its exploration. During the period when a piece of land was cultivated by antiquated modes, it was not feasible for a man to manage on cultivating operation except on small spaces. But after the growth of man's ability and power and the abundance with him of the means for husbanding nature to his control, it became possible for a small number of individuals – those of them to whom the opportunity was offered – to put to cultivation huge pieces of the open spaces of the land and to subjugate them to their control with the employment of big tools and

heavy machinery, a thing which shakes violently to foundation of social justice and upsets the work for the good of the society, so there must be a juridical form in respect of the zone of lacuna, which is able to fill it according to circumstances, so that a general per-mission is given for the cultivation of the land in the first period and individuals in the second age are forbidden performing of cultivation operation except within limits commensurate with the aims of Islamic economy and its ideas of social justice.

It is on this basis that Islam has composed the zone of lacuna in the juridical form by which the economic life is regulated in order to reflect and keep pace with the dynamic element, the change of relationship between man and nature.

Lacuna not a Defect:

The gap or zone of lacuna is not indicative of defect or deficiency of the juridical form or omission of giving proper attention to some actually existing things and occurrences. On the contrary, it expresses the comprehensibility of the form and the power of the law to keep in pace with diverse ages because the *sharī'ah* has not left the zone of lacuna in a form which would mean lack of proper attention or a deficiency but has specified its prescriptions for the zone of lacuna by giving every occurrence its primary juridical property along with conferring upon the Head of the State the power to give it a secondary juridical property according to circumstances. For instance, the cultivation of a land by an individual is by its nature, an operation legally permissible and the Head of the State has the right to forbid the carrying out of it according to exigencies of time and circumstances.

The Juridical (Statutory) Proof:

The following verse of the holy Qur'ān is the proof of the conferring such a capacity of filling the zone of lacuna. *O you who believe! Obey Allāh, obey the Messenger and those in authority from among you* (4:59).

The limits of the zone of the lacuna to which the capacities of the Head of the State is enlarged include in the light of this verse every act

which in its nature is legally permissible. So that any activity about which a legal text does not occur indicating its unlawfulness or obligatory and the Head of the State is permitted to give a secondary property by forbidding or enjoining it. So, when the Imām forbids a permissible by its nature, it becomes unlawful and when he enjoins it, it becomes obligatory. As for the acts the unlawfulness of which is established by law in general, for instance, interest (usury) the *waliyyu 'l-amr* had no right to enjoin it, or likewise, if the law of the *sharī'ah* has ordered and act as obligatory, for instance, as the alimony of wife is obligatory upon the husband, the *waliyyu 'l-amr* has no authority to forbid it, because obedience to the *waliyyu 'l-amr* is taken to be granted to be within limits which do not conflict with obedience to Allāh and His general commandments, so it is the class of action which is in their nature '*mubāḥ*' (permissible, approved) in the economic life which composes the zone of the lacuna.

Illustrative Examples:

In the transmitted texts of the tradition, there are numerous illustrative examples, of the *waliyyu 'l-amr*'s exercise of his powers in terms of the zone of the lacuna. These illustrative examples throw light on the nature of the zone, and the importance of its positive role as to the regulation of the economic life on the Islamic society. We, therefore, offer in what follows a portion of those illustrations, supporting with the texts, the light they throw and the positive role they play:-

a) It has come in the text that the Prophet prohibited the surplus of water and fodder. It is stated on the authority of al-Imām Ja'far aṣ-Ṣādiq (a.s.) that he said: "The Messenger of Allāh (*s.a.w.a.*) gave an executive order among the people of Medina in respect of watering of palm-groves, that the surplus of water and fodder shall not be forbidden." This prohibition is a prohibition of *ḥarām* (unlawfulness) as required by usage when we add up to it the opinion of multitude of the jurists to the effect that forbidding of a man to another man a part of the surplus water and fodder which he possesses is not one of the original unlawful things of the statutory laws like the forbidding to a wife her alimony, the drinking of the intoxicants, we can adduce that the interdiction issued by the Prophet in his capacity of *waliyyu 'l-amr*

It was the exercise of his capacity of finding the zone of the lacuna according to the circumstances. The society of Medina (city) was in great need of increasing their animals and farms products, so the State imposed upon individuals to give the surplus from their water and fodder to others for promoting the animals and farm wealth .

Thus, we see that giving of surplus water and fodder is a *mubāḥ* (permissible, approved) act and the State imposes it as an obligatory duty (*taklīf*) for the implementation of the good (in general) which was essential for it.

b) An interdiction of the Prophet against the sell of fruits before they are ripe occurs in the tradition about it on the authority of al-Imām Ja‘far aṣ-Ṣādiq (a.s.), that the question was asked to the Imām about a man selling named fruits of a land and all the fruits getting destroyed. The Imām replied: “A dispute like that between people was carried to the Messenger of Allāh (s.a.w.a.). They used to mention it. When he saw that they did not give up quarrelling, he interdicted the sale of fruits till they were ripe. However, he did not make sale of unripe fruits unlawful but interdicted it on account of their quarrelling.”

In another tradition, the Messenger of Allāh (s.a.w.a.) is stated to have declared: “The sale of unripe fruits is lawful, but when it leads to dispute and disagreement no buying or selling of the fruits is allowed until they are ripe.”

Now, the sale of the fruits before they are seem good is a permissible act in its nature, and is commonly permitted. But the Prophet interdicted it in his capacity as *waliyyu ’l-amr* this sale to ward off the mischiefs and oppositions resulting from it.

c) at-Tirmidhī reports on the authority of Rāfi‘ ibn Khudayj that he said: “The Messenger of Allāh (s.a.w.a.) interdicted us from indulging in an act which was profitable for us, that is, if we happened to have a piece of land to give in the consideration for a part of the land-tax (*kharaj*) or for dirham.” He, also, told us: “When anyone of you possesses a piece of land, let him bestow it upon his brother to cultivate it or let himself cultivate it.”

Now, when we put together the case of this interdiction and the agreement of the jurists on the validity of giving land on rent in the code of the Islamic law in general and add to it the numerous traditions cited on the authority of the companions indicating the permissibility of giving

the land on rent we would adduce a clearly defined explanation of the text occurring in the tradition reported on the authority of Rāfi‘ ibn Khudayj. It is that the interdiction was issued by the Prophet in his capacity as the *waliyyu ’l-amr* and not as a common legal dictum.

So, hiring out at rent of a piece of land is one of the *mubāḥ* in its nature which the Prophet can forbid as an imposed inter-diction in his capacity as the *waliyyu ’l-amr* conformably to the exigencies of the situation.

d) During the rule of al-Imām ‘Alī (a.s.) came to Mālik al-Ashtar strong orders urging upon him to fix the limits of prices conformably to the justifiable requirements. He has talked to his governor about merchants, has committed them to his care then followed it with the observation: “And know with that – that there are many who are excessively narrow hearted and abominable miser, profiteers, arbitrary in their buying and selling transactions. That is a category of harmful person to the common people and blameworthy for a governor, so forbid them from hoarding. In fact, the Messenger of Allāh (s.a.w.a.) has prohibited from indulging in it. And let buying transaction be a magnanimous transaction by the scales of justice and let prices be not arbitrary to either buying party or selling party.”

It is juristically clear that it is permissible for the buyer to sell his commodity at any price he likes. The Islamic code of law (*sharī‘ah*), does not prevent by a general interdiction on the owner selling his commodity at an unfair price. Now, the order of the Imām by putting a limit on the price of a commodity and preventing the merchant from his selling it at a higher price was issued by him in his capacity as the Head of the State was by virtue of a use (an exercise) of his power and authority about filling the zone of the lacuna in consonance with the exigencies of the social justice which Islam has adopted.

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APPENDICES

- 1 -

**EXAMINATION OF THE EXCEPTIONS
TO THE MUSLIM'S OWNERSHIP
OF THE CONQUEST LANDS**

**The Rule of the Cultivated Land After the Enactment
of the Law of *Anfāl* (Peacefully obtained Booties):**

Among the jurists' circles there exist an opinion which discriminates between two types of cultivated lands acquired in case of conquest.

One, the land, the cultivation of which, by the unbelievers was being done before the enactment of the law of the Imām ownership of *anfāl* including dead lands as when the land has been a cultivated land ever since the pre-Islamic pagan times.

The other, the land, acquired in case of conquest, cultivation of which stems from a time later in date than the enactment of that law, as when the Muslims conquered it in the fiftieth year of the *hijrah* (672 A.D.), and its cultivation began after the revelation of the Chapter 'The Angels', or after the death of the Prophet. For example, the first category of land at the time of conquest by the Muslims is the public property, while the second category is not owned by the Muslims is the property of the Imām alone.

The jurist research scholar, the author of the book *al-Jawāhir*, on discussion of *khums* in his book, states: “By application of the companions and the traditions designation of the Muslims’ owner-ship of forcibly conquered land is meant a dead land which unbelievers had reclaimed before Allāh made over *anfāl* as gift to His Prophet; and if not, it also belongs to him, even if it was in a cultivated state at the time of the conquest.” However, the jurist scholar opposes that view on discussions of reclamation of dead lands in his (same) book.

The foregoing admission of the two points is the reason of making juristically the distinction between the two types of cultivated lands acquired in case of conquest. These two points are as follows:-

a) After the legislation of *anfāl* an unbeliever will not become the owner of a dead land by reclamation, because according to this legislation, the land will be the property of the Imam; and the Imām would not agree to an unbeliever’s rehabilitation so that he may become the owner of the land he rehabilitates.

b) The Muslims will legally seize, on conquest, as booties and take possession of only the properties of the unbelievers, not the properties of the Imam which are in the latter’s possession and control.

From this, it may be deduced that a dead land which an unbeliever rehabilitates after the enactment of the law of *anfāl*, will be the property of the Imām and the unbeliever will not be its owner by rehabilitation, as the first point establishes. Therefore, when the Muslims would conquer it, they would not become its masters, because it is not a property of an unbeliever but a property of the Imām. They become the owner of only what they seize as booties from the unbelievers, as in the above-mentioned second point.

This opinion which aims at making distinction between these two types needs some clarification, because when we examine the legislative texts which award to the Muslims the properties, including land which they have taken from the unbelievers by the sword we find ourselves between two hypotheses. One hypothesis is that, properties gained by conquest awarded to Muslims may, according to these texts, be taken to be every property which was a possession or a phase of right to possession of it in the past, of an unbeliever; and the second hypothesis, every property seized by conquest from under the possession and control of an unbeliever, regardless of the nature of the legal relationship of the

unbeliever with the property.

Therefore, on the first hypothesis to understand these texts it is necessary – in order to grant their application to the property of the war spoils – to prove, in advance, that this property was (formerly) the property or right of the unbeliever, then Muslims have taken possession of the same by conquest.

Contrary to the first point, which denied the right of an unbeliever to whatever dead land he rehabilitates, after the enactment of the law of *anfāl* we hold the opinion, that an unbeliever's rehabilitation of a waste land appoints as a heir to the right to it like a Muslim, even if the property right to it be that of the Imām, in accordance with the text which says: "He who rehabilitates a land is more entitled without any distinction between Muslim and non-Muslim."

In this light, Muslim's conquest of a land will constitute a ground for the transfer of this right from the unbeliever to the community while proprietary right of the land will remain to be that of the Imām and there will be no conflict between the two.

However, if we choose the second hypothesis, for the explanation of the texts about '*ghanīmah*' properties, these texts will be inclusive of land which the Muslims seize as booties from an unbeliever, even if they be not the properties of an unbeliever or to which he holds a right before the conquest, because the basis of the Muslims right of possession is abroad, in this light, is the seizure of the property from under the possession and control of an unbeliever and this is what was received.

This will lead us to the confrontation of the conflict between the application of the texts regarding '*ghanīmah*' and the application of the evidence of the Imām's ownership, because the land which an unbeliever had rehabilitated after the enactment of the law of *anfāl* and the Muslims had conquered it, thereafter, will be considered subsumed as a land seized from an unbeliever by conquest, under the texts regarding the '*ghanīmah*' and consequently a common property of the Muslims, while it will be considered subsumed as a waste land at the time of the enactment of the law of *anfāl*, under the evidence of the Imām's ownership of a waste land, and consequently his property.

In cases such as there, it is juristically necessary to determine with precision to what extent the meaning of the texts suffer conflict in order to stay adoption of the issue of the conflict along with the embracement

of the rest of the parts of the meaning.

When we take into consideration the conflict here, we find '*lām* (ـِ)' in their statement is its point of concentration, that is, the '*lām*' in the statement that every waste land belongs to the Imām and in their statement every land taken by sword belongs to the Muslims. Now, '*lām*' does not indicate ownership, by its nature but a special right. It includes ownership by application. This means that the conflict is between the two *lāms* because they indicate two different possessions. So the two applications are cancelled and the root meaning of the jurisdiction remains established since there is no objection to the supposition of the two jurisdictions of the land which an unbeliever has rehabilitated after the enactment of the law of *anfāl* and the Muslims' conquest of it thereafter.

One of the jurisdictions of the Imām's jurisdiction at the level of ownership and the other is the Muslims jurisdiction at the level of (public) right.¹

¹ In other words, the conflict is not, in fact, between allowing the general application of the caption '*ghanīmah*' because of the texts Muslim's ownership and the application of the caption 'waste-land' because of the texts permitting the ownership of the Imām in order to determine the obligation of removing the element of conflict, that is, the land about which we are speaking, either from the former texts directly or from the latter texts likewise. But the conflict is, in fact, between the application of the '*lām*' in all these texts because it is these two applications which lead to the joining of two properties in one single owned property, and the rule of conflict demands gradual cancellation to that extent and to no more than that. So, the application of the '*lām*' giving the meaning of ownership will be cancelled from either of the groups of the texts and the root meaning of the '*lām*' indicating special right will remain. In that case, we will establish the Muslim's right of the land about which the element of conflict occurs by the very '*lām*' in the texts of '*ghanīmah*', because to this extent there is no contradiction. And we will establish the Imām's right on the land as the right of ownership by the above totally showing that the entire land belongs to the Imām because after the cancellation of the two specifics will be had to the total will be reference. Indeed, it may be believed contrary to what we have stated that the presentation

By this, we arrive at the same conclusion we arrived at, on the basis of the first hypothesis.

Is *Khums* Excluded From Conquered Land?

The thing which remains for us to know is whether obligation of the *khums* is included from conquered land or is adjudged entirely to the property of the Muslims without the exception of the *khums*.

Perhaps, a majority of the jurists hold the view of affirmation, in adherence to the applications of the textual evidence of the *khums* which demands inclusion of the immovable also.

Contrary to this, a group of the jurists hold to the negation of the *khums* on the claim that the applications of evidence of *ghanīmah* must be excluded from it, in view of the evidence of the application of the evidence of the Muslim's ownership of the conquered land which demands negation of *khums* in respect of it.

Ascertainment: The intended object of the supporters of the view of the negation of *khums* of the conquered land adhering to the application of the evidence of the Muslim's ownership of it, may be either that of giving preference of this evidence to the application of the evidence of

of the proof of the ownership of the Imām is the determined when there arises conflict between the two groups of the texts, because the comprehension (taking of the whole) in some of its text is given with the article of generality such as, in its statement ("Every dead land belongs to the Imām") against the tradition of the *kharaj*-land for their meaning is, the comprehension of the whole in general.

The reply to it is that the application of the traditions of *kharaj*-land does not conflict with the individual generality in its statement, every dead land, but conflicts with its temporal application to what is after the conquest, in the sense that the conquered cultivated land at the time of conquest was an inner part of the proof of the Imām's property without contradiction. Therefore, the side of the contradiction is, the temporal application because of the proof of the Imām's property, not the individual generality, which is declarative and even to the extent of temporal application I have informed that the reference of its two sides of the contradiction of the contraction is precisely to the *lām's*' application being a side of the contradiction. Therefore, if the inexistence of the application of '*lām*', which indicates ownership, were assumed, there will remain no contradiction, neither of individual generality nor in spite of the temporal application.

one-fifth of the *ghanimah*, or it may be that of merely the projecting of the confliction between the two applications of the two evidences and to be content with the dropping of cancellation of the negation of the proof of *khums*.

If the first is intended then it depends upon an evidence of the Muslim's ownership of the conquered land being more specific than the evidences of the *khums* of *ghanimah*, in order to be preferred to it by specification. But his mere specification is a matter of investigation because it is the essential pre-requisite of the identification, if more specific be the main subject matter of one of the two evidences then the subject matter of the other, the position of the more specific being firmly established, because the subject matter of the evidence of the Muslim's ownership is the conquered land, and, the subject matter of the evidences of the *ghanimah* is *ghanimah* and it is known that the conquered land is more specific than the natural *ghanimah* for it is a species of it. But if the essential pre-requisite of the more specific be the observation of all sides and conditions of intensive to the verdict, then the relation of the position between the two evidences will be in respect of totality, because it will take difference of the subject matter of *ghanimah* and the subject matter of the land acquired as booty at that time. The subject matter of agreement between them will be the seized land while the division between them will be the *khums* of things other than the land, on the one hand and other than *khums* of the rest of the seized land on the other hand.

Obviously, here there is no complete measure for the identification of the more specific; rather, the situation will vary with the variances of the occasions of legal practice (*'urfān*) as detailed in the explanation of the *uṣūl* (principle) of jurisprudence.

But if the second is intended, that is, the projection of the contradiction between the two applications of the two evidences, and the obligation of cancellation and the admission of there being not more specific, then it may be replied, that if contradiction is given up then giving of preference of the application of the evidences (texts) of *khums* of *ghanimah* to the application of the evidence of Muslim's ownership of the conquered lands can be held for two reasons: -

One of the reasons is that in the evidences of *khums*, there is a verse of the Holy Qur'ān which occurs in respect of *khums*. We have

ascertained in the right place that the opponent of the Holy Book, for instance, in respect of totality will fail as an argument, in the matter of agreement and the Qur'ānic totality or absoluteness will be preferred to it in accordance with the imperative texts with the discarding of what conflicts with the Holy Book.

The second reason is, that the implication of the evidence of Muslim's ownership due to the top of agreement, is in general and by the preludes of wisdom and philosophy (the Prophet's saying), while implication of the whole evidences of the *khums* of *ghanīmah* due to the conquered land in totality; like the report of the tradition by Abū Basīr: ("Everything fought for on the attestation that there is no god but Allāh") is subject to *khums*. Likewise, the holy verse of the Glorious Qur'ān. As for the tradition, it begins with the particle of totality '*kul*', while as for the holy verse, though it does not contain the particle of totality yet the phrase, "every thing" in the holy words: *and know that every thing which you seize as booty* takes the place of the particle of totality as regards the meaning according to Islamic legal practice form applying oneself to the verse for the comprehension of its literary meaning and the verbal totality is given preference, in situation of conflict to the preludes of wisdom established without exception.

Thus, we learn that the reply in answer to the adherence to the application of the evidences (texts) of *ghanīmah*, needs another approximation.

The Ascertainment:

The uncertainty of the imposition of the *khums* on conquered land as we have found in our discussion of it in this book; and that is because in the *ghanīmah* traditions, there is nothing which is fit for inferring from it by the application of it to the proof of the imposition of *khums* on the conquered land except the above mentioned tradition reported by Abū Basīr, because other traditions, in fact, are in between being either weak of authority like the traditions of confinement of *khums* in five things, or discarded in confliction, like the tradition reported by Ibn Sinān: "No *khums* except in special *ghanīmah* (spoils of war)" or hemmed in by special link other than land of the *ghanīmah*, like the traditions on the extraction of *khums* of the *ghanīmah*; and the distribution of the rest

among the participants of war, because the distribution (of the spoils of war) among the participants of war, indicates that their occurrence is in respect of the movable spoils of war.

Thus, we learn that the application of the tradition of Abū Baṣīr added to the holy verses is limited to *ghanimah*. These two applications are the prop of the proof or the certainty of the *khums*, but nothing comes about from the two upon their later ascertainment.

As for the verse, it is that its subject matter has been explained in the *ṣaḥīḥ* (sound) tradition reported by Ibn Mahziyār as the profit a man acquires. In the light of this explanation, the subject matter of the verse would be an expression of private profit, while the evidence of the Muslim's ownership of the conquered land excludes it from its being a private profit. So, the subject matter of *ghanimah* cannot apply to the meaning of the interpreter in *ṣaḥīḥ*. Hence there remains no application for the verse which implies the forcibly conquered land.

As for the tradition reported by Abū Baṣīr, it will be replied from two sides.

One, that the holy verse in view of the true tradition reported by Ibn Mahziyār, which explains it will be restricted to the tradition reported by Abū Baṣīr, inasmuch as when it applies to the property, the caption of profit, and that is because the verse demands that the *khums* be established with the caption of profit and tradition reported by Abū Baṣīr demands that it be confirmed by property being -the property fought upon. Rather, it has to do with the caption of profit in that respect. Therefore, either of them, in accordance with the need of its application, implies that the caption taken from it be the entire subject matter of the *khums* of the *ghanimah*. With the revolving of the matter in the mind between the two applications of the tradition, lifting of hand from the application of the tradition reported by Abū Baṣīr restricting it to the caption taken from it, that is, profit; and that is because the restraint, without exception, is there; and the necessity of non-interference of the caption of profit directly in the matter *khums* of the *ghanimah* leads either to the removal of the *khums* of the *ghanimah* from the application of the verse and turn it to other sources of *khums*, or, to the necessity that the verse, even if it implies to the *khums* of the *ghanimah*, is nothing but a caption taken from it, that is, the profit, and it has nothing to do with this subject matter of *khums* at all; and both

cases are invalid.

As for the removal of the *khums* of the *ghanimah* from the application of the verse, it is obvious that the *khums* of the *ghanimah* is a sure Divine Decree from the verse because it is the source of the *sunnah* of the Prophet and his application of it. So, there can be no necessity for the removal of it. As for the caption taken from the subject matter of the verse, that is, *ghanimah*, in the sense of private profit, that too is invalid, because when the matter runs between the discussion of cancellation of the caption taken as regards either of the two evidences (texts) directly on the basis of objectivity restriction of the deduced caption taken in respect of the other proof it will be allocated to the second and in the place of the imperative, likewise. So, there is no escape from the obligation of restricting the subject matter of the tradition reported by Abū Basīr to the caption of profit.

However, if it is said that this also makes cancellation of the caption taken from the tradition reported by Abū Baṣīr imperative, that is, the caption, what is fought upon (spoils of war) because profit in itself is an essential pre-requisite of the *khums* even regarding of source other than those fought upon, (spoils other than war booties acquired from the enemy without blood-shed).

We would say: It does not make it imperative, on the contrary, caption of fighting the subject matter of the inner core of the *khums* of the *ghanimah* to the extent of the caption of the thought of capital as regards the subject matter of the *khums* of the mines and its effect is the proof of imposition on property in its entirety without the exception of the provision contrary to the caption of the profit alone, that is, the basis of the pre-requisite essential of the *khums*, after the exception and not for the whole.

It clearly follows from this that the restraint as to the application of the tradition which needs the caption derived from it to be the whole of the subject matter, makes cancellation of the caption derived from the verse in respect of the *khums* of the *ghanimah* directly necessary or the restricting of the application of the tradition to the verse after the exposition and the necessity that the subject matter of *khums* consists of fighting and the veracity of the caption of profit. There is no danger therein (object of precaution) of the giving up of the caption directly.

So, if that is proved the reasoning by the tradition falls down

because the caption of the private profit will not apply to the land after its being a public endowment for (the benefit of) the Muslims to the Day of Judgement.

This is the whole of the first sides of the reply to the reasoning with the tradition reported by Abū Baṣīr.

As for the second side, the gist of it is:

That the application of the tradition reported by Abū Baṣīr conflicts with the traditions implying their application to the ownership of Muslims for the whole of the conquered land. The lands so acquired are of two kinds. First, the land taken by sword and second the green land (Iraqian land).

As for the first kind of the relation between it and the tradition by Abū Baṣīr being on the assumption of totality is subject to it and it cannot conflict with it because the application of it is by the preludes of prophecy, while the totality of the tradition by Abū Baṣīr is declaratory.

As for the second kind, as the caption of it is arable land (Iraqian land) it is a mark of a land which is limited abroad. So its implication will be by verbal appearance, not by the prophecy, and at such a time it will be good for conflict with the tradition by Abū Baṣīr. This means that the tradition by Abū Baṣīr will only happen to be a side of conflict in the first grade with the second kind particularly and after the elimination of both sides, the shift will amount to the first in its turn without (any) conflict, because the first kind in view of itself subject to it, due to the basis of totality in the tradition of Abū Baṣīr. It is impossible that it will come to be a side of the conflict with it in the first grade so that it will fall (be eliminated) with its falling (elimination).

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**DISCUSSION ABOUT THE INCLUSION OF
WASTE-LAND OF CONQUEST IN
THE LAW OF THE TAXLAND**

It is stated, as in *ar-Riyāḍ* that the texts indicative of the fact that the waste-land from a part of *anfāl* is a property of al-Imām, come in conflict on the basis of direction in respect of totally with the previously mentioned texts indicative of the fact that the land acquired by sword belongs to the Muslims, and the confrontation of the conflict is the waste-land conquered by force, because as a waste-land the texts of the Imām's ownership of the tax-land imply it and as force is subsumed under the texts of the Muslim's ownership of the tax-land according to the saying, 'what is seized with sword belongs to the Muslims'. So, what is the juridical justification for the taking of the texts of the Imām's ownership and the applying them to the conquered land, when they are waste-land and disregarding the texts of the Muslim's ownership and applying them (to it).

It may be answered to this objection that the subject matter of the texts of the Muslim's ownership is the properties which Muslims seize as spoils of war from the unbelievers. The seized spoils from the unbelievers are the properties which the unbelievers own, whereas the waste-land is not the owned property of anyone of them. They own only the land which they cultivate, so the waste-land is then the subject matter of those texts.

This reply is valid only on the basis of the first of the two hypotheses, which we have previously mentioned in the first appendix in respect of the subject matter of the texts of the *ghanīmah*. But if we take the second hypothesis and say that the *ghanīmah* is what is seized by sword is abroad, then in that case the application of the subject matter of the texts of the *ghanīmah* does not depend upon the seized property on the basis of its being a property of an unbeliever but the property being under the control of unbelievers will be sufficient for its application, so as to take it from them.

Therefore, every property seized in the war from under the possession and control of an unbeliever would constitute *ghanīmah*, whether it be or not be the property of any of them. Now, it is obvious that a wasteland in the unbelievers' country will be regarded as being under the control and possession of the unbelievers of that country. So, by its occupation, on the part of the Muslims, it will confirm the fact that it was taken by sword even if it was not the property of a definite enemy. So, the conflict is towards totality as regards is being established.

For all that the texts of the Imām's ownership are submitted for the following technical reasons:

Firstly: The texts of the Imām's ownership can be classified under two sets. Those which occur with the wording, 'lands which are wastelands' belong to the Imām; and those which occur with the wording, 'lands which are ownerless belong to the Imām'.

Clearly, the second set of the texts of the Imām's ownership cannot conflict with the text of tax-lands indicating the ownership of the Muslims, on the level of the first set in order to eliminate both sets in situation of conflict at the same grade. And, it is because the texts of the tax-lands prove (are indicative of) the Muslim's ownership of the conquered land, governing. So, such term the second set since they separate the land from its being a land having no owner and makes Muslims its owner.

Therefore, it is impossible for the second set in such a case to happen to be the side of the conflict with the traditions of the ownership of Muslims because the governed will not contradict the evidence of the governing. The outcome of it will be that the conflict in the first grade centres upon between the texts of the ownership of the Muslims and the first set of the texts of the ownership of the Imām; and after the falling in

succession we will get to the second set of the texts of the owner-ship of the Imām without the conflict (contradiction) only if by the addition of a declaratory *istiṣhāb* (the seeking of link – i.e., to something which is known and certain) which trains its subject matter – which is the non-existence of (absence) of the owner of the land.

Secondly: In the texts of the ownership of the Imām, there are terms which indicate exhaustiveness of the totality of the ownership, like the saying, ‘every land which is waste-land belongs to the Imām’. Whereas, the texts about the tax-land indicate the ownership totally and total is preferred to the absolute when the capital between the two is in respect of the direction of the totality.

Thirdly: If we admit the elimination of the two parts of the conflict, recourse to the above-mentioned total ownership of the Imām will become incumbent, as stated above that the whole of the land is the property of the Imām because this totality is apt for the authority after the gradual elimination of the conflicting texts.

Fourthly: If the two sets are eliminated and if we disregard the above-mentioned competent authority the *istiṣhāb*, a competent authority is made possible because the waste-land was the property of the Imām before the Islamic conquest of the country in accordance with the texts of the Imām’s ownership of the waste-land, and implies Muslim’s ownership is of it only by conquest in case of the assumption of the guarded elimination of the application of the texts by conflict, the ownership will be sought to be linked with the Imām. But this reason is fulfilled only in respect of the land which was conquered after the enactment of land as the Imām’s property, so as to become here a prior conviction of his ownership so as to make use of the *istiṣhāb*, just as some of the former reasons will also be fulfilled in respect of some suppositions, condition in respect of them may change with the change of historical timing (time reckoning) of the enactment of the law of the Imām’s owner-ship of the *anfāl* and the enactment of the law of Muslim’s ownership of conquered land. The verification of the conquest is irrelevant leaving no room for its detailed statement.

THE LEGAL EFFECT OF *AT-TAḤJĪR*

Many jurists think that *at-tahjīr* (putting a protective enclosure round a land) gives the person who sets up the enclosure a private right to the land around which he sets up the enclosure (sequesters it) and prevents others access to it. In that, they rely upon the traditions which are unsound from the point of their chain of authority (*sanad*) and there is no reliance that could be placed upon them. Therefore, there is no competent, pious evidence as to the subject matter. It can be said that fencing cannot be considered a ground for private right as a separate independent operation. It can be regarded thus only as a beginning of the rehabilitation and the beginning of the work of cultivation and rehabilitation.

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**THE DISCUSSION AS TO WHETHER THE
OWNERSHIP OR RIGHT (TITLE) IS THE
EFFECT OF REHABILITATION
(OF A WASTE-LAND)**

Opposed to that set of the texts which indicates (imply) explicitly – the rehabilitated land – remaining the property of the Imām and his right to the *kharaj* (land-tax) thereon. There are found two sets of texts which imply the proprietorship of the rehabilitator of the land he has rehabilitated and is not being responsible for anything in respect of it. One gives here the meaning of them at the level of appearance, and the other indicates (implies) it explicitly.

As for the first set of the texts they are just like what is mentioned in the tradition by Muḥammad ibn Muslim on the authority of the *Ahlu'l-bayt* (a.s.): “Whoever rehabilitates a portion of the land will have more right to it and that it will be his”. For the *‘lām’* (genative) in the phrase *‘lahum’* implies competent authority while the literal meaning of its application to competent authority – a manner of ownership.

As for the second set of the texts the example of it is a tradition reported by ‘Abdullāh ibn Sinān on the authority of Abū ‘Abdillāh (a.s.). He (Sinai) said: “While I was present a question was asked of the Imām, about a person who had rehabilitated a waste-land, had dug out stream, built houses and thereon planted palm-groves and trees.” The Imām replied: “The land was his and the rent accruing from the houses. But he

will have to pay the '*ushrā* (tithe – i.e., *zakāt*).’ His contenting himself with the mention of *zakāt* in the place of the determination of what was due upon him, is like making explicit statements as to the negation of the *kharaj* (land-tax) and the discontinuation of the relation of the Imām with the *riqbah* (physical ownership) of the land. Therefore, a remedy for the ending of the conflict between these two sets and the set referred to in the text, is inevitable.

It may perhaps be said, that this set is useless after the establishment of a definite decisive *sīrah* practice as regards the rehabilitator not giving the *kharaj* since the time of the Imām to this day. Likewise, there is no sense in carrying it to the time of the *zuhūr* of the Ḥujjah. So, it is necessary to lift our hands from it.

We answer to that with the denial of availing of the practice referred to, because if it is meant the practice of the jurist following devotionally text of *the Ahlu 'l-bayt* (a.s.), it may perhaps be due to their not giving for remuneration of traditions declaring something lawful or permissible, not in view of the discontinuation of the Imām's relation with the land directly after its rehabilitation, and if it is meant for the practice of Muslims of other sects – then it is on account of their subscribing to another jurist principle. Or, it may perhaps be said that the companions have avoided from this set – indicating ownership of the Imām, so it is void as a basis of argumentation.

The reply to it is, firstly, that avoiding of a tradition does not make it void as a basis for argumentation as we have explained the *uṣūl* (Principle of Jurisprudence).

Secondly, avoiding of all jurists is not proved and mutual admission of all jurists as to the *de facto* invalidity of *ṭasq* (a fixed sum of land-tax) on account of the traditions declaring the lawfulness of permissibility of its meaning by all.

Thirdly, that if their avoidance of its meaning were admitted, it would perhaps be on account of the practices of the rules in the domain of contradiction and the preference of the contrary and not for particular faults therein.

According to this, the solution of the conflict is necessary to conceive reason for that:

First: to take the set ordering *kharaj* on the basis of *istiḥbāb* (presumption of accompanying circumstances) in combination of it with

what is explicit as to the invalidity of it.

It may be replied that this would be confusing the obligatory (*taklifiyyah*) law with the declaratory (*waḍ'īyyah*) law, because this integration will be valid in respect of *taklifiyyah* (obligatory) laws where the order in respect of it holds when the permission is arrived at on the basis of preference, and not of the declaratory laws, for the point of the validity of integration there, is absent here. Therefore, the reason for the taking evidence of the *taklīfī* (order to mean the obligatory) preference, after the occurrence of the permission, will be either constructed on the basis of the research scholar. an-Nā'inī, as regards the evidence of the obligatory nature of the order; and because the obligatory nature and the basis are not the two meanings of the word, rather the obligatory nature is drawn from reason's diction by the necessity of the furnishing of the wanted (demanded) of the *Mawlā* (the Lord) whenever mentioned thereof. Therefore, when the per-mission comes, the question of the obligatory nature factually disappears and is established by the integration of it with the comprehensive demand – the meaning of the word *istiḥbāb*. Or it may be on the basis of being obligatory nature established by the application of the meaning of the order so that the bearing demand from – *istiḥbāb* – to be restricted to the application which is the origin of the obligatory nature and to be restricted to the requirement of the rule. Or it may be on the basis of obligatory nature being a declaratory meaning towards a direction, since the bearing of *istiḥbāb* depends upon a claim of the existence of the literary sense of the secondary meaning of the version of *istiḥbāb* – choice or preference – reaching it into its turn after the lifting of hand from its first literary sense of necessity in order to be *istiḥbāb* established by literary sense and not by interpretation.

All this is not accomplished in the matter of the literary meaning of the statement of declaratory law just as in the place, since his statement ('let him pay the fixed amount of land-tax or the fixed land-tax') is practice ('*urfan*) an explanation of the indication for (the ownership of) ownership and not a naked defining (controlling) demand pure and simple. So it does not lead to the meaning of *istiḥbāb*.

The second reason: The set of traditions indicating explicitly the continuation of the ownership of the Imām gets eliminated in its disappearance coming in conflict with the explicit tradition in its

disappearance and ends up, in its turn, to the set of other literal traditions in its disappearance and gives to the rehabilitator the proprietor's right to the land in general. The reason for it is that this set of literal tradition cannot reasonably be a part of the conflict with the set of traditions which are explicit about the continuation of the Imām's ownership of a waste-land because the applicatory literal sense cannot be contrary to the explicit. Rather, the explicit tradition will be tied to it literally.

Accordingly, the conflict in the preceding category will be between the two sets of explicit traditions and will reach in their turn the applicatory literal sense without contradiction.

The idea of this explanation is based on the fundamental rule about the domain of contradiction. The rule is that when two sets of traditions come in conflict (where) one of which, in its entirety is explicit about negation, for example, and in the other wherein there is something which is explicit affirmation and that which literal as regards to it. Therefore, elimination of all of them in the same rank because of which is literal as to affirmation, cannot contradict that which is explicit as to negation, when the explicit is in a degree which fits with the contextuality of legal practice. The explicit as to affirmation contradicts the explicit as to negation only, and after their mutual elimination; and comes back to the literal sense of the negation not contrary as regards its rank.

This general rule, although it is not practically settled with the jurists yet is, in fact, an extension of the rule which is settled with them theoretically and practically. The rule is a restart to the above general after the mutual elimination of the two specifics because the very idea which demonstrates that the general (universal) cannot happen to be a part (side) of the contradiction at the level of the two specifics points to that in place of similar kind.

This reason, however, is based upon the determination of the elimination of the two explicit, one by one, and the non-preference of either. The explanation of the 'preferred' will be given later on.

The third reason: It is based upon the reversal of relation-ship on the pretext that the texts are opposed to each other in the direction of incongruity. The tradition of *taḥlīl* (making or declaring lawful or permissible) are limited to the text implying to the disownership of the rehabilitator and the proof (establishment) of *kharaj* (land-tax) due upon him, and removes from under it, the individuals whom the traditions of

tahlīl includes. Therefore, the text, because of this becomes absolutely (in general) more moral specific than the text which negates *kharaj* (land-tax) absolutely (in general) and the contradiction disappears.

It may be replied to this – as an adjunct to the forms of the major reversal of relationship – that the reversal of relation-ship between the two universals (generals) incongruous (varying greatly) from each other, is accomplished only when the specific, happens to be with one of them, is opposed to the other of them in order to take the meaning of the corresponding universal, the source of the specific – and in the place of the traditions of *tahlīl*. And if they were contrary or earmarked, they would not indicate the certainty of *kharaj* except that they are not in agreement with the negation of *kharaj* and implying the rehabilitator's proprietorship of the (rehabilitated) land because the literal sense of the negative universal is the explanation of the entire Divine Ordinance, and not declaring the proprietary permissible as is the intent of the traditions of *tahlīl*.

The mention of some of the traditions of the negative set as regards the source of the Jews and Christians, a matter which is indicative of the fact that in connection with the statement of the private proprietary permission, so it cannot be taken to mean the source (origin) of the tradition of *tahlīl* to be the reversal of relationship.

The fourth reason: That the two sets of texts contradict each other, and the text which is indicative of rehabilitator's proprietary ownership of the land is chosen either on account of its being a *mashhūr* tradition or on account of its conformity to universals of the definite practice of the Prophet, whereas in that the sentence: "He who rehabilitates a land, that land belongs to him", is *mutawātir* about them in general from the Prophet and Imāms. It indicates by the application of '*lām*' to the ownership and so it carries more weight for the text which is indicative of the rehabilitator's ownership of the rehabilitated land.

The reply to it is what we have mentioned in the *uṣūl* (Principle of Jurisprudence). It is that a tradition's being *mashhūr* (well-known) to a degree the issuance of which does not lead to its certainty, cannot have more weight. In the same way correspondence with *as-sunnatu 'l-qat'iyyah* (a decisive practice of the Prophet or Imāms) added to the fact of *sunnah* not reaching *tawātur* as regards position.

The fifth reason: That the text indicative of not giving possession of

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the ownership of a land to the rehabilitator of it, and continuation of the Imām's proprietary ownership of it, carries greater weight in a place of one being contrary to the other and that is because the other text which conflicts with it is opposed to the universal of the Book (Qur'ān) and is presumably found in a place of suspicion. As for the universal of the Book, it is the declaration of Allāh, the High, "Do not appropriate each other's property. Invalidly except in the way of commerce with one another by mutual consent". This verse gives the verdict that every means of appropriation or taking possession of another's property except by way of commerce with mutual consent is invalid. Obviously, taking into possession of the property of the Imām by way of rehabilitation is not trading with mutual consent, so it is invalid by the application of the verse. Therefore, it will be what proves the rehabilitator's acquiring ownership of the land by rehabilitation according to the application of the verse. Therefore, it will have precedence, likewise the reality of the direction in respect of it, is decisive not what indicates to the rehabilitator's ownership, so consider well.

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**DISCUSSION ABOUT THE PERMISSIBILITY
OF THE SALE OF A REHABILITATED
LAND ACCORDING TO
ASH-SHAYKH AṬ-ṬŪSĪ**

It is said that this (personal) opinion which denies the rehabilitator's acquiring ownership of the rehabilitated land is in-capable of explaining juristically its sale, because an individual on the basis of this (personal juristic) opinion does not acquire ownership of the land. So its sale is not permissible to him. He only acquires a right (of usufruct) to it, although permissibility (legality) of every individual's selling the land he rehabilitates is established self-evidently in the *sharī'ah* (Islamic Law).

The reply is: That the sale secures the conferring upon the buyer the same relationship which unites the seller with the property in return for the seller's acquisition of the same relation-ship which unites the buyer with the (purchase) money (price) regardless as to whether the relationship is at the level of owner-ship or at the level of right (of usufruct). Therefore, it is permissible to the man who rehabilitates a land to sell it because the man enjoys a personal relationship with the land. It is the relationship to which we technically give the name, right (to usufruct). There fore, it is possible for him to sell the land in sense of conferring upon the buyer this relationship in return for his acquisition of

the relationship of the buyer with the money (purchase-price). By this the buyer becomes the possessor of the right (of usufruct) to the land in place of the seller who possessed the right to it by the reason of rehabilitation while the seller becomes the owner of the money which the seller owned before the purchase.

An individual's sale of a land he has rehabilitated is explained by another reason. It is that the rehabilitator sells the right and not the land itself. But this explanation does not hold for selling of a thing means the seller's conferring to the buyer considerative relationship which unites him with the thing. Consequently the assumption of a considerative relationship holding between the seller and the sold thing (uniting the seller with the sold thing) is inevitable in order for the seller to confer it upon the buyer. Now the right is a legal prescription. But the possessor of the land holds no considerative relationship with that of the legal prescription like his relationship with all of his possessions.

For example, he does not own the legal prescription; or in other words a legal prescription is not saleable because of the non-existence of its adjunction or considerative connection with the seller. The right is only a legal prescription so its sale is not conceivable.

Add to it that it is the product which the buyer acquires possession of not the buyer becoming owner of the right (of usufruct), as meant, in the sense that if we take for granted the land being an owned thing of the seller like all his other belongings (possessions) then the sale of it will result in the buyer's acquiring the right of the seller and not to his earning of this right. What a difference there is between the buyer possessing the right of the seller and his right established to it of its own.

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ACQUISITION OF POSSESSION THROUGH CONTROL

On this basis, it does not create for an individual a private right of ownership of a territory (lit., land) such as forests, etc. conquered by force, just as it does not create for an individual a private right of ownership to a cultivated land-tax by rehabilitation before conquest.

It is sometimes said that naturally cultivated land can be had or owned on the basis (ground) of taking control (possession) of it since the control plays in regard of the naturally cultivated land the very role (part) which rehabilitation plays in the rehabilitation of naturally waste land. This saying relies for establishing owner-ship by reason of possession (control) upon the traditions indicating that “he who possesses (a thing) owns (it)” (possession is ownership). It may be remarked against this saying.

Firstly: That some of these traditions are of weak testimony (authority) so they have no force of argument and among them there is one which does not imply to this saying inasmuch as it is cited in context with the clarification of the indication of actual possession and has made possession a literary indication of the ownership and not a cause of it. And among them there is one which was cited in respect of specific or source, like the saying “to the hand belongs what it takes and to the eye belongs what it sees” , a tradition cited in respect of hunting.

Secondly: If the traditions of possession and control were admitted to be pertinent to the primarily main *mubāh* thing in which will not legally be owned by an agency or an individual then they will not imply the position in view of the fact that the supposed is that the forest is either the property of the *ummah* (community) or of the Imām.

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**NO DISCRIMINATION BETWEEN THE KINDS
OF LAND THE POSSESSORS OF WHICH HAVE
EMBRACED ISLAM VOLUNTARILY**

It is possible for one to conceive the possibility of discrimination between two kinds of lands the possessor of which has turned Muslim voluntarily. One of it is the kind of land's cultivation of which was extended historically to a period before the legislative enactment of the Imām's ownership of waste-land and the other, the kind of lands which were waste-lands at the time of the legislative enactment of the Imām's ownership of waste-lands, then the unbelievers restored them to cultivation and after that they embraced Islam voluntarily.

Therefore, every land of the first kind will be considered the property of their owners and will not be classified (entered in the record) as the property of the Imām, since it was not a waste-land at the time of the legislative enactment of the Imām's ownership of it. On its owner's turning Muslim they can keep it for themselves because Islam withhold from bloodshed and property (protects life and property).

As for the lands of the second kind, they are the property of the Imām in view of the fact that they were waste-lands at the time of the

legislative enactment of the Imām's ownership of waste-lands. Therefore, they are classified to be within the scope of the Imām's ownership. Their rehabilitation on the part of unbelievers thereafter should not deprive him of the property of them. It (the rehabilitation) only leads to in the establishment of their right (of usufruct) to them. Therefore, if they embraced Islam, while holding the land, this right of theirs will be protected for them, not the proprietary ownership of the land becoming their property as far as Islam spares and protects property and it neither adds to the property nor makes anyone other than the owner, the owner of it.

As a result of that the land the owner of which embraces Islam will be his property, if its cultivation were (took place) before the legislative enactment of the Imām's ownership of waste-land and he will not be put in possession of it (remain its master) if its cultivation were (took place) after that, he can keep to himself the private right in respect of it. This elaboration looks like the elaboration which the author of *al-Jawāhir* adopts about the conquest lands we have mentioned above in the first appendix where it is mentioned that "if its cultivation was (took place) before the legislative enactment of the Imām's ownership of a (rehabilitated) waste-land then it belongs to the Muslims, or else, it is the property of the Imām and the Muslims are not put in possession of it".

The justifications of the detailed statement about the land the owners of which have turned Muslim voluntarily in the legislative period (the early Islamic regime) includes (implies) the principle of the Imām's ownership but not an evidence on its becoming a property of a certain unbeliever who cultivated it and turned Muslim voluntarily while holding its ownership, neither by reason of his restoration of its cultivation nor by reason of Islam. As for restoration to cultivation, it does not confer upon its rehabilitator the proprietary ownership of the land on account of fact that rehabilitation means only competence (legal capacity). As for Islam, we do not find • anything which proves that it is a reason for a person taking possession of a land he holds when he embraces Islam. All the proofs which are advanced in respect of that are disputable.

a. An individuals mastery of a land by his holding it for the reason of his embracement of Islam is inferred from the application of the texts

which say, the land's, when the owner's of them will embrace Islam voluntarily, will be left in their possession and they will be theirs and they, on account of their application (the traditions) comprehend such of the lands the cultivation of which occurred before the enactment of the law of the Imām's ownership of waste-land and that land's the cultivation of which occurred after that.

The reply is that these texts have occurred in two traditions related by Ibn Abī Naṣr and all the ways in which both of them are narrated are weak and cannot be convincing proof in respect of them.

b. It may be inferred from general texts, pointing to the fact that Islam protects life and property and from the literal meaning of the texts of Islam's protection of property is the conferring of the land to its owner when he embraces Islam voluntarily.

The reply is: that the sense of these texts is that the property which a person's voluntary conversion to Islam spares and forbids the taking of which is the possession taking of which but would have been publicly lawful were it not for his conversion to Islam, for this side of the texts corresponds to the other side of them which expounds the rules of law as regards a belligerent unbeliever and both these sides as a whole make it clear that if an unbeliever wages war against the call to (mission of) Islam, his land, his possession and his life are made public property (taking of them is permitted) and if he embraces Islam voluntarily all these are spared. Then what is that to which they are entitled is the very thing the appropriation of (gaining control over) which would have been *mubāḥ* for (commonly permissible to) the Muslims, if he did not turn Muslim and contended the call to (mission of) Islam. So in order to know what is spared to him and what he acquires, if he turns Muslim, it is necessary for us to know, what of his possession would be *mubāḥ* (permissible for) and will be made over to the Muslims, if he did not accept Islam but con-tended against it.

In this connection it is necessary for us to recall what we have mentioned in appendix I that the land, the owner of which did not embrace Islam but was conquered by force, if the land was under cultivation before the legislative enactment of the Imām's ownership of waste-land, then it will be the property of the Muslims, and if its cultivation occurred after that, then it will be the property of the Imām because it was not a property of the unbeliever before the war but was a

property of the Imām. To the unbeliever belonged the right (of usufruct) to it before war on account of his rehabilitation of it and this right will be transferred to the Muslims.

Therefore, on the basis of it, we learn that the owners who embrace Islam voluntary would not be the owner of lands unless their recultivation occurred before the legislative enactment of the Imām's ownership of waste-land because the Muslims would not acquire their ownership on the hypothesis of war except on this hypothesis. In short, if we knew that the object, which is spared by the voluntary conversion to Islam is the very object which is captured as booty by a wage of war against the call to Islam in view of the sparing of life and property by (conversion to) Islam in the texts, corresponds to their lawfulness for the Muslims. We join to that the taking of proprietary right to the forcibly conquered (recovered waste-land) is not lawful for the Muslims if the recultivation of it took place after its legislative ownership of the Imām, as only the very right to it is lawful for them which the unbeliever acquired to it by reason of his rehabilitation of it. From these we may derive the conclusion; one who embraces Islam possessing a recultivated waste-land the recultivation of which occurred after the legislative of the Imām's ownership of waste land, will secure his right to the land which is supposed to be transferred to the Muslim if he wages war against the call to Islam. He does not own the land. He only owns the land only of its recultivation occurred before the age of Islamic legislation (formative period of Islamic Law).

Then, the principle of Islam does not add to the property (anything) nor confers new proprietary right which did not belong to it. It only preserves those rights and proprietorships which he enjoyed. As to the waste-land which an unbeliever puts to cultivation after the legislative enactment of the Imām's ownership of waste-land, the unbeliever does not become its master, he acquires only a right (of usufruct) to it, and it remains the property of the Imām. Then, by his voluntarily embracing Islam, he preserves his right and it continues to be his property as it was before, (i.e. in its status *quo ante*).

c) It may be inferred from the customary practice (*sīratu 'n-nabiyy*) of the Prophet for the customary practice followed upon leaving in the hands of its owners, if they embrace Islam voluntarily without a scrutiny as to the date of the rehabilitation of the land and without demanding

from them a fixed land-tax for it, a matter which argues to the fact that Islam conferred always the ownership of a rehabilitated land upon the one who joined the fold of Islam voluntarily. The reply to it is that this is beyond any doubt established illustrious practice of the Prophet, but it does not demonstrate the ownership of the land's property of one who embraces Islam voluntarily and its being outside of the boundary of the Imām's ownership, because the practical differential between the land's ownership being of the one owning it by embracing Islam voluntarily and its being the Imām's property along with the existence of private right of one owning it be-coming Muslim voluntarily, because it only becomes apparent in respect of the imposition of *kharaj* (land-tax); for if the land were the property of its owners who have embraced Islam, there would be no justification for the imposition of the land-tax in respect of it upon them. But if they had a right (of usufruct) to it, while it continued to be the property of the Imām, the land-tax in respect of it will be due from him to the Imām. This practical differentiator (differential) has no place for it (is out of question) on the customary practice of the prophethood, for the Prophet used to forgive land-tax. Therefore, his not taking land-tax cannot be considered a proof of the exclusive (private) proprietorship of the land.

Thus, it becomes clear that this elaboration in respect of a land the owner of which voluntarily embraces Islam – between the lands rehabilitated before and the land rehabilitated after the legislative enactment of the Imām's ownership of waste-land, although it is not void of validity from the juridical point, yet, what interferes with its adoption is the consensus against it. So, recourse to consensus of the ownership of the land is absolutely to the owner of it, that is, the one who embraces Islam voluntarily, becomes inevitable.

* * *

RULE ABOUT SPRINGS WHICH WELL UP IN AN OWNED LAND

The well-known juridical opinion holds that the natural springs which gush up in the property of a person will be deemed to be his property because they arose from his land. It was because of this that ash-Shaykh aṭ-Ṭūsī considers this kind of discovered natural sources of water constitutes a subject matter of controversy. He says as for the divergent is in respect of its being the owned. It is every well or a spring which arises in his property, the quarrel about it is on two fronts one of which is that it is owned, the other, that it is not owned.

The fact is that I do not find an argument to the ownership from the texts of the holy Books or the texts of *sunnah* (the practice of the Prophet). Possibly the strongest argument from which the supporters of the statement of ownership conclude is that the spring arose in the property and the legal texts which indicate that the growth of a possession pertains to its principle as regards ownership.

The reply to the argument is that a spring is not in fact a growth of his property in the sense of its being a fruit of his possession which he owns in order to acquire its ownership by his ownership of the principle, but is a wealth inside of a wealth, in its condition is that of the condition of a content and a container, not of a tree and its fruit, and the ownership of the container does not call for the ownership of the content.

In the light of this we learn that the well-known juridical opinion

holding the belief of the ownership should be adopted if it is supported by intellectual argument such as the pious (imitative) consensus or the customary, practice of the intellectuals which fulfils the conditions which we have expounded before-hand explicitly in the present book. Unless something of this nature supports it there exist nothing in the arguments specially that which would justify its adoption.

* * *

**DISCUSSION AS TO AN INDIVIDUAL'S
TAKING POSSESSION OF A
SPRING HE UNEARTHS**

What has been already said in the book in regard to a person not becoming the owner of a spring of water he unearths (discovers) by digging it, was established on the basis of reason (ground) which is opposed to the well-known view which holds that he becomes its owner, and it specifically belongs to him and that is all.

This well-known view should be adopted if the initiative consensus on it has come about it but if no consensus like that has come about like that then there is a possibility of controversy (discussion) about the arguments which are put forth for the establishment of it. They are numerous, as follows:

a) A spring water is an outgrowth of his property. Therefore, if a man digs land and discovers spring water therein, the ownership will be legally his because it is an outgrowth of his property and as long as the land is his, whatever rises (outgrows) from it, will also be his.

The reply is that spring water cannot be regarded as a part of the growth of the land but is a wealth present therein. Therefore, the relationship between them is that of the container and the content. So the relationship between them cannot be compared with the correlation ship

obtaining between a principle and its natural product, the right of the possession to which is shown by the rules of the *sharī'ah* (Islamic Law) to follow from the ownership of the principle. For instance, the correlation between the egg and the hen of which it is the product and the correlation between the crop and the seed of which it is the fruit.

b) The meaning of the texts implying the permissibility of the sale of (the right to) the use of spring water (*shurb*) like the report of the tradition of Sa'īd al-A'raj (the lame) wherein the Imām is stated to have permitted the sale of a canal (aqueduct, conduit of water). Had it not been a (private) property its sale would not have been permissible.

The reply is the permission of sale is more general than the ownership. Entitlement to a thing is sufficient for the validity of a sale, so the sale may have been in view of the right which belongs to the individual in respect of the canal whence this right may be transferred to the buyer so that he becomes more entitled to it than anyone else just as the seller was. The assignment of the sale to the land itself does not negate this on the ground that the sale equally, if it was in respect of the right to the original or to its ownership, concerns only the entitled or the owned (thing) not with the right or ownership itself, as is clear. So reports of traditions of the permissibility of the sale of the canal when completed in respect of it, does not imply anything more than the entitlement.

c) The rules of the rehabilitation of a waste-land are applicable to discovery of spring water. It may be replied that the texts "he who rehabilitates a waste-land, the land is his", only shows rehabilitation's being the preparatory cause (*sabab*) for giving its inhabitant private right to it, not to what the land contains which the term 'land' (soil) cannot be applied, like the water contained therein. Add to that this. It does not import more than giving the rehabilitator a right (little) to the land according to the opinion of ash-Shaykh aṭ-Ṭūsī as we have already learnt.

d) By making discovery of a spring water and the possession of it. Ownership of every natural wealth is acquired by acquiring possession of it. The reply to it is that there does not exist any reliable (authentic) text implying that every (kind of) possession is the reason (preparatory cause) of its ownership.

e) The established prevalent local practice (*aṣ-ṣirātu'l-*

‘uqalāiyyah).

The reply is the possibility of proving the prohibition of the practice to anything more than the entitlement or priority. In that respect there is the least of doubt. Moreover add to it this. The prevailing local customary practice does not constitute to be a *ḥujjah* (an authority, argument, evidence) in itself, it becomes a *ḥujjah* only when as regard to its discovery from the execution of its legislator. There is usually only one way of discovering of the sanction of the legislator. It is as regard absence of restriction where it can be said that had he not undersigned (sanctioned) it, he would have restricted it. Then, before inferring from local prevailing customary practice the determination about the non-enforcement of the restriction becomes inevitable, at the time of confirming the knowledge of the sanctioning of it. But the determination about the un-enforcement of the restriction, cannot be asserted with the existence of some-thing in the report of a tradition which carry the sense of the restriction, even when incomplete as to its *sanad* (chain of authority) inasmuch as there probability of its occurrence of it, side by side with the restriction from the legislator, is sufficient for the incurrence of the determination about execution (about its sanction), for although a weak tradition cannot constitute on authority (argument) yet would be deemed sufficient, on the whole in all cases of the invalidation of the argument on the basis of prevailing local customary practice and the prevention of the determination about the execution (signature). This is a general point which should be taken in consideration in the totality of the occurrences of inference from the prevailing local customary practice.

On account of this we may state that a number of traditions mentioned now with the language that are co-sharers as to the use of water in the language of prohibition, forbidding of the use of surplus water and thirdly in the language of prohibition against the sale of a canal after one's being in no need of it, lead at least to the probability of the occurrence of the restriction as to absolute appropriation, termed ownership.

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**DISCUSSION ABOUT THE OBLIGATION OF
LETTING (FREE) A CANAL AT THE
TIME ONE IS NOT IN NEED OF IT**

There are traditions which cause conflict between this set and the set of traditions which implies permissibility of the sale of the canal like the tradition reported by al-Kāhilī. He says: “A man asked Abū ‘Abdillāh in my presence (while I was with him) about a canal, held among a people, with a known share of each as to the use of water of it. Now, a man from among them was in no need of the use of its water. The question asked was, as to whether the man could sell it in return for a quantity of wheat or barley. The Imām replied ‘He may sell it for anything he wishes.’ “There is nothing in this after the projecting of the conflict; the two may be reconciled by attributing the prohibitive traditions to dislike (*kirāhah*).

But on looking into them this reconciliation of them is found to be incomplete, since if conflict between them is hypothesized while the source of their both is about a topic, how can a prohibition be reconciled, even, if it be in the sense of dislike, with his statement. There is nothing in this. It is quite clear as regard its being free from all hostility, or doubt. A looking into the reconciliation of the two sets of the texts; it is found that the prohibitive set, like the trustworthy tradition of Abū Basīr

mentioned in the text, implies (points to) two things one of which is, the obligation of letting and making a free gift of it so that the one to whom it is let utilizes it after the possessor of the canal's satisfaction of his (irrigation) need; and the second the impermissibility of its sale. The second set of which of al-Kāhili's, the above-mentioned report, is one, is not actually contradictory of (incompatible with) the first face to face on account of the fact that it does not point to (imply) the permissibility of letting to another of the canal. It only points to (implies) the permissibility of the sale does not necessitate the impermissibility of the letting of it. Do not imagine from the place of its being legally binding.

The pretext, that if lending of it was obligatory, there would remain no motive for the sale or it remaining an object of purchase, because one who would desire to, buy it would dispense with it by borrowing it gratis from him so long as it is legally bending upon him to lend it free of charge. Therefore, the very supposition of sale and the verdict as to its permissibility is legally binding as to the permissibility of lending it free of charge so as to confirm the nature of prevailing customary practice for buying and selling, inasmuch as it dashes off this delusion in that the obligation of the lending does not make purchasing and selling senseless. Since, it is just possible that he may not be content with the enjoyment of generosity conferred benefit free of charge by lending. But, he may rather have the desire to have it belong to him the right of priority to the canal just as it belonged to its possessor no longer needing it. This right is only transferred by purchasing and selling.

Accordingly, the set of texts implying permissibility of sale are not primarily inconsistent with the obligatory nature of lending (gratis). Yes! Certainly, the opposition happens to be between this set implying the permissibility of sale and the prohibitive set from the point of its second sense, (import) the impermissibility of the sale of the canal. The solution of this opposition is that the set prohibiting sale and the set ordering to lend carries two meanings in its prohibition, the first of which is, that it is a factual (real) prohibition of sale with an absolute statement; and the second that it is a prohibition of it *vis-à-vis* lending, in the sense that, do not compel a man who desires to take it as loan to buy it, rather then give it to him as a free loan. Therefore, it is prohibition of sale in cases the demand for loan and not an absolute prohibition of sale. But if the prohibition would be in the first sense, absolute prohibition of sale then a

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contradiction will arise between and the set of texts implying permissibility of sale, and if in the second – not an absolute prohibition, then there will be no contradiction. Then it is desirable to be held that if the set of texts implying permissibility of sale are stronger than the appearance of the other set in the first sense if it has its appearance in respect of that and we do not hold hesitatingly between its two senses; or its appearance in the second, the appearance of permissibility will be given precedence and then will result from the combination of the two sets the permissibility of the obligatoriness of the lending of the surplus of the requirement from the canal to the other free of charge and the permissibility of its sale conclusive of the transfer of the right of exclusive (private) possession and priority to the buyer.

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THE ANNEXATION OF THE MINE TO THE LAND

By this we mean that in this respect the mine is like the land because the proof of the established right or mastery about a mine is mental (non-verbal – *labbi*) and cannot be held by its application, it is possible that *istiṣhāb* (assumption of accompanying circumstance) may prevent its enforcement for more than one reason.

If it is held that the reports of tradition occurring about (the imposition of) *khums* on mines, ordering the extractor of the mine to pay *khums*, imply generally or necessarily to the ex-tractor being the owner of the other than *khums* of the mine. Accordingly the proof of the individual's mastery of the mine would be verbal not mental (non-verbal).

We hold, that these reports of the tradition are not in a position of clearness as to the rule about mines, and the right of the extractor regarding it to adhere to them for the establishment of that right on the occasion of doubts about its certainty but is only a statement of the certainty of the *khums* of the extracts from the mine which gives ownership to an individual by virtue of his extraction. So, it is not possible to prove – by these reports – the question of ownership of the remaining material in the mine as to whether they belong to the extractor

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or not. But the point of our discussion is the material obtained from the mine and not what is staying there.

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**OWNERSHIP OF A BIRD IS ACQUIRED BY
HUNTING EVEN IF POSSESSION OF
IT IS NOT ACCOMPLISHED**

The statement of al-Imām ar-Riḍā (a.s.) in the collection of sound traditions (*ṣaḥīḥ*) to the effect that: “He who hunts two-winged bird, whose claimant of it is not known, is the owner of it” indicates what has been previously stated in this book (*Iqtiṣādunā*) because it established the fact that the bird will be judged to belong to the hunter by the mere confirmation of the capital hunting irrespective as to whether taking possession of it was accomplished or not. So, it includes the form of the release of the bird from the possession of the hunter as in the assumption which is explained (elsewhere) in this book and its meaning is that hunting itself is the reason as possession is, and this is attributable from the point of theory to the giving to the hunter the right of the opportunity (utility) which his work has created.

* * *

**DIFFERENCE BETWEEN OWNERSHIP BY
HUNTING AND OWNERSHIP BY
ACQUISITION (*ḤIYĀZAH*)**

The juristic proof on that is the application of the statement of al-Imām aṣ-Ṣādiq (a.s.) given in the collection of sound traditions if ‘a bird’ possesses its two wings, it belongs to him who takes it. Indeed, this application includes as if this bird, the owner of its two wings was a bird to which another man was entitled before that by hunting and which thereafter recovered from his detainment (regained its freedom) and flew away.

It is held that this report of the tradition is tied to the tradition reported by Muḥammad ibn Faḍl and others wherein it is stated: “I asked him about the catching of a pigeon, worth one dirham or half of a dirham. He replied: ‘If you know its owner, return it to him.’”

We hold that this text and its likes, even if tied to a preceding absolute text, yet, its mention is about whether the bird came under the control of its previous owner. This is learnt from the context of his statement, ‘return it to him’. The order as to its return is evident about the fact that the supposed is the know-ledge of the other’s previous actual control of it. As for the supposition of entitlement by more hunting (catching) without actual control and possession as in the form which we have discussed in the text which is given in the tradition reported by

Muḥammad ibn Faḍl will not be applicable on account of the capture of ‘return’ (*radd*) to it not being true.

So there results – after the consideration of the absolute (general) along with the tradition narrated by Ibnu ’l-Faḍl – the detailed statement between the thing when a person had gained control over a two-winged bird before and had mastered it by acquiring hold over it, and the thing when he may have mastered it and was entitled to it merely by catching it. In the first case, the bird will not be lawful for the one who caught it a second time, and in the second case it will be lawful.

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**DISCUSSION ABOUT A PERSON'S RIGHT OF
POSSESSION TO WHAT IN A DONOR'S OR
AN AUTHORIZED REPRESENTATIVE'S
OR AN EMPLOYEE'S ACQUISITION**

The discussion is divisible in three parts:-

First Part: It is about the thing when an individual acquires for another man a property by way of service offered voluntarily, not by way of the power of attorney nor in consideration of compensation; will the latter take possession of it as his own?

The reply to this question should be made after leisure from the understanding of the connection of an acquisition, for some reason, with one who does not directly do anything to acquire it. That may be due to the fact that the one who puts himself to the task of appropriating the property may be meaning to do so, as a preliminary to another's appropriation and utilization of it. So, the pursuer's possession of the property will itself constitute a connection of the property with that person, putting him in the capacity of his being the one for whom it was acquired. So, the inquiry will be directed from the possessee's (recipient's) right of the possession of the property acquired.

But the reply to it will be in the negative and that on account of the non-existence of any of the elements (factors) which juristically imply

that they justify taking possession of a property by a person other than the one who does the work of acquiring the property accept waged labour contract or agency agreement possession itself only justifies the ownership of the acquirer and not of any other person and the possessee (the one for whom it was acquired) is not the acquirer. So, there does not exist any reason of his ownership by assigning to him the reason of ownership of him equally whether the reason be simply the execution of the process of acquisition, that is, its physical expression (actual possession) or the reason be the acquisition which the possessor executes in the way of an aimer and with the intention of the utilization of the things he acquired, because on either assumption there does not exist any justification of the possessee's right to the possession of wealth which a person other than him has acquired it by his labour and effort. On the basis of the first which constitutes (physical) – side a sufficient reason of ownership, because the possessee has done nothing for appropriation so as to earn the ownership by way of it, while on the second basis, it is also likewise (i.e., he has nothing), because appropriation is the basis factor of the owned possessions in any case and it does not exist for the possessee of it.

The long and the short of the difference is between the two bases is that the immediate acquirer, who purposes the acquisition for another person owns the acquired property on the first basis because the material side of the acquisition is achieved by him, but on the second basis he does not possess it.

Second Part: It is about when an individual empowers (gives him the power of attorney) another individual in respect of an acquisition for him and the empowered one acquires it. This is the self – same assumption as the former with the addition of the assumption of power of attorney. After having settled from the former assumption, that it does not give the right of ownership to another person for whom the immediate acquirer acquires it. Here the talk leans to the casualty of the power of attorney for the principal's taking possession (ownership) of the wealth of nature his agent (empowered attorney) acquires.

What can be said in respect of the justification of this casualty, is that the act of the agent by virtue of agency (power of attorney) pertains to derive from the principle, so the acquisition of the agent will be an acquisition of the principle just as the sole of the agent be the sole of his

principal. Therefore, the cause of the ownership will thereby become complete in respect of the principal.

The reply to this statement is that the act of the agent (attorney) is attributable to the principal only in legal and conventional matters like buying, selling, gift, hire, but not in creational (bodily performed) matters which are certainly attributed to the person who performs it. Therefore, a principal can verify by power of attorney that he has sold his book, if his authorized agent has sold it. But he cannot verify that he visited so-and-so, if he gives a person the power to pay visit to him for the attribution of the visit to the visitor is a creational (bodily performed) act contrary to the attribution of the selling to the seller, for the latter is a considerable (legal or conventional) matter capable of wider sense by legal practice (usage) to power of attorney. Acquisition in its capacity of an external appropriation, is a kind of visit which is not attributed to anyone other than the visitor merely by power of attorney (proxy) and is not a sort of selling and gift.

On this basis, we hold that authenticity in considerable legal matters, like sale and such like transactions is established with proofs in accordance with conformity to the rule; about their establishment of the self same common primary proofs are sufficient. For example, the authenticity of the owner's sale, because of the power of attorney (proxy), in view of the fact that it results in attribution of the sale of the proxy (attorney, authorized deputy) to the principal, determines (confirms) there-by the criterion for the application of the primary proof indicating the validity of the sale without needing a pertinent (specific) legal proof about the authenticity of the power of attorney.

But in creational matters other than considerable, since mere power of attorney does not achieve its capability of wider sense to creational as regards attribution, (attribution of the act per-formed by the proxy to the principal in bodily performed matters like paying visit). Therefore, the validity of the power of attorney, and the reduction of the act of the proxy to the act of the principal needs, as regard legal tradition, a specific pertinent proof. The primary proof indicating the assignation of that tradition on the basis of it will not be sufficient.

Since there is no application from the traditions, the principal calls for the disassignation of the tradition of the principal's act to the act of the proxy (agent) in creational matters unless a specific proof is got up on

the devotional reduction from the law giver. But in the field of acquisition and possession, no such proof is established, so the power of attorney is made null and void in such matters.

Third Part: It is about when an individual hires another individual to obtain for him *mubāḥ* thing (*res nullis* things free and open to all): Will he become the owner of what his employee acquire or will he not? This part is divisible in two-side issues or derivatives.

One-side issue is about when the hire concerns a specified share of the acquisition, that is, the acquisition of the hire for the hirer, in such a manner that the hirer is able to take possession of this share of the hiree's work.

The second issue is about when it concerns the nature of the acquisition.

As for the first side issue, it is about when the hire concerns (the hiree's) acquisition for the hirer of it; sometime it may be taken for granted that the hireling is entitled to another share of the acquisition as if when he acquired for himself, and at another times it may be taken for granted that he acquired for the hirer in accordance with the terms on which he was hired.

On the first assumption there is no doubt as regards the hirer's not taking possession of what the hireling acquired because the acquisition which occurred from him was not his property, nor did it rest upon the hire contract to be thought of as an outcome of it.

As for the second supposition from the first side issue, and it is that which the hireling acquires for the hirer in accordance with hire contract, here there is nothing to distinguish it by juridical discussion from the second side issue, it is, about when it concerns the nature of the hire acquisition since there is found nothing in it to imply its being a justification of the hirer's taking possession of the wealth a hireling acquires, save hire contract. Therefore, if it were admitted about this supposition that the hirer takes possession of what his hireling acquires, then it is admitted only on the basis of the execution of the contract and this basis itself is also established in the second side issue.

Thus, it requires concentration of the supposition, the discussion from the second of the first side issue, and from the second side issue of this point, which is:

Can the hire contract be the cause or reason of the hirer's right of

ownership to the natural wealth his hireling acquires?

It is juristically obvious that primary meaning of the hire contract and its real role constitute the conferment upon the hirer the usufruct of the hired property like residing in a hired house and the hiree's benefit of the hired labour; and the benefit of the hireling is his labour with which the Status is established like the establishment of the status of usufruct with the living in the hired house.

This will mean regarding the object of discussion is that of what the hirer takes possession of is the work of the hiree, that is, the acquisition of the usufruct established thereby. As for the acquired object, that is, the wealth (material) acquired if that is what were to take possession of belongs to the hirer, then this is not directly the meaning of the hire contract. On the contrary, it is invariably the result of his taking possession of the acquisition. Just as when we supposed that the right to the possession of the acquisition is inseparable juristically from the right to possession of the object (acquired).

Thus, it becomes incumbent upon us to discuss this aspect juristically so as to see as to whether the right to possession of the acquisition is a cause or is inseparable from a kind of the right of the possession of the goods acquired.

At the juristic level there are several matters on which it is possible to rely for the justification of this casualty and the reasoning about the hirer's taking possession of the hiree's acquisition (being) a cause of the right to the possession of whatever property the hireling acquires. They are as follows:

The first: What is well-known from the book *al-Jawāhir* and from other books, that the acquired thing is the outcome of acquisition which hirer takes possession of and therefore he becomes owner of the property acquired, following the ownership of the acquisition for he who owns the original (the principal thing) owns its outcome (product).

This proof is between two explanations:

One of which is, that acquired property is the product (outgrowth) of the hirer's owned property like the product of a tree. Therefore, just as the owner of the tree constitutes to be the owner of its fruit on account of his ownership of the tree. Likewise, he will become the owner of the wood which his hireling acquires from the forest on account of his ownership of the acquisition which his hireling has executed.

The other is: acquisition is like tailoring work. Therefore, just as the product of the tailoring work is owned by the owner-ship of the tailoring work so in the same way the product of the acquisition after the legislator attributes to it the cause of the owned with the ownership of the acquisition, the product being sometimes in the form and sometime the thing itself without distinction, for the utility of everything is according to what it is.

As for the first explanation, it is incorrect, on account of the obviousness of the difference between the attribution of the acquired property to the acquisition and attribution of the fruit to the tree. The fruit is the natural product of the tree. As for the acquired wood, it is in no way the product of the acquisition but the thing which is produced by the acquisition is the falling of the wood under the control, that is the wood taken possession – not the wood itself. The argument only indicates the fact that one who owns a thing owns its product like the fruits of the trees and the eggs of the hens (he owns). As for the product in the metaphorical sense which is here applied to the wood acquired, it is not a proof of his taking possession of it by the right of his taking of the acquisition.

As for the second explanation, it could be replied to: first that the product of tailoring is not owned by the very hire-contract. Therefore, if a person engages a tailor for making, from a piece of woollen cloth, a shirt for him, he does not become the owner of the tailor's product the specific form whereby the woollen piece of cloth becomes a shirt, on account of the hire contract, but becomes the owner of the form (shirt) by his owner-ship of the very piece of woollen cloth established before his hire contract, as ownership of the material is, in law an outright ownership of all the shapes and forms that occur therein. Shapes and forms have no separate (autonomous, distinct, independent) ownership. (There is no ownership for shapes and forms apart from the things of which they are the forms or shapes)

Therefore, if we suppose that the piece of woollen cloth does not belong to the hirer but to someone else for whom it is permitted to have the right of its disposal, and the hirer was not in a position of owning the garment shape on account of the hire-contract. This means that the product of the work of the hireling, for example, the shape of the cloth can become the property of the hirer, if it happened in the material which

belonged to the hirer prior to the hire contract. Regarding the subject matter under discussion, since the wool acquired was not owned by the hirer before the hire contract, but was a public property free to all (one of the *mubāḥāt*) its deduction by analogy from the product of tailoring is absurd (invalid) on account of the existence of the differential.

Secondly: the product of the acquisition *vis-à-vis* the shape resulting from tailoring (the garment) is not the wool itself, but the ownership legally derived from the acquisition.

Therefore, it is the ownership of the property acquired in the case of acquisition which is equivalent to the specific shape of the tailoring work, so, if the analogy of acquisition with the tailoring became obscured, and if we disregarded the first objection, the result of that would be that the hirer takes possession of the ownership of the wool, not the wool itself and this has no meaning.

Second: if the acquisition of the hiring was owned by property of the hirer, then it is in fact his acquisition. The hirer owns the wool acquired in the capacity of its acquirer by the very acquisition of his hiring.

Therefore, our objection to this stand-point is:

First: the hirer's ownership of the hiring fulfils the attribution of the acquisition to the hirer with the attribution of the ownership not in terms of the attribution of the act (work) to the actor (worker), so that the hirer becomes the acquirer by the acquisition of the hired; nor is it the preparatory cause of an individual's right to the possession of a property (goods) but it is a cause of his being its acquirer of it and not his being the owner of his acquisition.

Second: if we admitted the attribution of the act itself – the acquisition – to the hirer on account of his ownership of it, even then it would not be helpful, because the proof of right of possession by acquisition is not a verbal proof so as to hold to it by its application. Rather it is non-verbal (mental) proof limited to the extent of certainty.

As for the claim of consensus that the hirer owns what his hiring acquires, it is not a claim of uncertain soundness; and if we admitted it, the above stated consensus will not be sufficient for establishing the ownership in the matter under discussion, for it is probable that the reliance of the many of the acquiesces in the above mentioned consensus is on their basis of conviction that the rules of the hire-

contract demand that from their belief about the correlation between the ownership of the acquisition and the object of the acquisition. As we do not admit this basis, with regard to us, it will not be submissively imitative consensus (we do not join with those who are unanimous about it).

Thirdly: that the practice of the ancient people (the local usage) is established on the hirer's right to possession of what-ever of the property the hireling acquires.

It is not possible for one to say that this practice according to us does not fulfil the reasons (grounds) for the knowledge of its existence and its range, and its diffusion in the law making age to a degree which determines its sanction from obtainable of prevention from it.

However, if we admitted this customary practice and the soundness of reasoning from it, only proves in respect of cases the inclusion of the customary practice for which is familiarly known; for the proof is verbal. So reasoning from it is possible – at that time only when the hireling intends the acquisition for the hirer's taking the possession of it and does not include any form if the hireling does not acquire with the intention for the hirer. For this form will not be a sure thing decisively from the customary practice.

Fourth: the claim of the proof of generalities and the applications of the soundness of the hiring to the wanted and that because it proves the soundness of the hire conformably with the matter under discussion and proves necessarily the hire's right to the possession of what the hireling acquires or else the hiring will be a bootless absurdity yielding no profit to the hirer, and so it would be, on account of it, null and void. Hence, the validity of hiring is inseparable from the hirer's right of ownership of the property acquired.

It may be replied to:

First: the hirer's profiting from (turning to the work of labour) the work of hireling is not limited to the right of possession of the acquired property. Rather, it is connected with the objective (intention) of the customary practice, the very acquisition itself and the wood taken from the forest by the hireling himself taking possession. So, the hire is not absurd in any case.

Second: if we admit the hire being absurd, and an absurd hire is specifically or definitively foreign to the proofs of the soundness of the

hire. Therefore, it is not correct to hold fast of those proofs for establishing its validity, besides the establishing of the right of the hirer to the possession of the acquired goods because it is holding fast to the general or absolute with the substitutive judicial error.

Add to this, the possibility of raising doubt as to the finding of the application of the proofs of hire, because in the reported sound traditions (*akhbār*) there is nothing which is in harmony with the reality of the statement with an absolute saying to hold fast their application. The verse of the holy Qur'ān: “*fulfil your contracts*” implies obligation not soundness, neither conformingly nor necessarily, and the saying of the holy Qur'ān: “*except that it be a commercial transaction carried out by mutual agreement*” is pertinent to trade, an evidence of buying and selling, and does include in it general ownership giving contracts.

Fifth: It is a saying of al-Imām aṣ-Ṣādiq (a.s.) in which he says: “One who hires himself out prohibit to himself his means of livelihood (*rizq*).”

This indicates that the hirer becomes the owner of what his hireling acquires; otherwise this saying will not be correct in general and would not apply to one who hires himself out for acquiring a thing and such like things. Hence, the application of the text and its inclusion of every hireling imply that the hirer and not the hireling becomes the owner of the acquired goods.

To this it may be replied in addition to the possibility of the disputation of the text – which this tradition does not occur with sound chain of authority. All the ways of its reporting are unsound as far as I know. So no reliance could be put upon it. Thus, we know in the light of all of these disputations, that the owner-ship of the hirer of all that his hireling acquires is not the cause to right possession of the property his hireling acquires.

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**DISCUSSION THAT THE ACQUIREE AND
NOT THE ACQUIRER IS THE OWNER
(OF THE ACQUIRED PROPERTY)**

It would be better to say that if a person acquires a natural wealth for another person, the ownership of it will be transferred to the person for whom it is acquired not on the basis that the pursuer of the acquisition is his representative or his hired employee but merely his being the one for whom it was acquired, because the evidence of the right of possession is the general practice (*sīrah*) about which it may be said that it is established on the acquirer's right of possession, irrespective as to whether he or someone else was the acquirer. The acquirer's right of possession not as being the acquirer so as to hinder what has been previously said (from the first side of previous appendix) that the acquirer is not the acquirer as a representative or the hirer, so as to oppose what has already been said from the two other sides of the preceding appendix, as to the fact that the contract of representation or hiring does not call for this.¹ Therefore, if this is completed, the meaning

¹ It may be observed on the basis of what has been said in the preceding appendix that the hirer's right of taking possession of what his hireling acquires, is sufficient juridical as to its proof the unfulfilled of the proof of the right to possession of pursuing hireling of its acquisition of it because he is a hireling,

APPENDICES

of it will be that a person other the pursuer of the acquisition will become the owner of the acquired wealth in one (and only one) way, and it is the pursuer who intends its acquisition for him. But in no other way than this, a person other than the pursuer will become the owner of the acquired wealth and the acquirer of it, being his representative or his employee will not justify his right to the possession of it, because we have learnt that the validity of the representation in creative (*takwin*) matters requires a specific proof and that is absent here. The hire contract demands the hirer's taking possession of the acquisition of the hireling which is some of his work, not the object of the acquisition, that is, the acquired wealth.

* * * * *

even if he pursues the acquisition. But the proof (argument) that acquisition is the cause of ownership is only a practice of local usage (a customary local practice) on account of the weakness of the authority of the traditions occurring on this subject — and we do not know that the practice of local usage during the legislative age used to confer upon the hireling the ownership of the acquired natural wealth. Therefore, when the hireling right to possession of acquired natural wealth is not proved, it will make it definite that the hirer will be the owner.

But this observation does not justify the hirer's ownership of the acquired natural wealth, even if it is accomplished, and we admitted along with its proof the absence of the proof of ownership of the hireling because the non-fulfilment of this proof does not mean its fulfilment of its opposite side.

We may possibly add to that: that this observation will not be dismissed in case of revival, about which a text there occurs to the effect that the land will be his who revives it! Because here there is ample proof that the person who revives the land is entitled to it and has a right to its ownership and here the reviver is the hireling, because it is he who pursues the process of reviving it. So, according to the application of the text, he will be the right owner.

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**AN OBSERVATION ABOUT
A SPECIFIC TEXT**

It is held that the justification occurring in the text that this is guaranteed and that is not guaranteed. It means completely that the earning without a previous work or labour is impermissible if it is guaranteed. But if it is not guaranteed, then it is permissible like the difference between compensation which a middleman (an intermediary) pays to the owner, or the percentage he submits to the farmer if it happens to exceed that compensation.

This statement is valid to some extent with regard to the explanation of the justification and for the comprehension of the sphere of inquiry in other fields.

End of The Book "IQTISADUNA"